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DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS.—*Attachment of Debtor's Goods.*

CAUSES OF ACTION CONCISELY STATED.

(Continued from Page 22.)

10. *For Rent.*—For (one year's) rent of a certain house, lands, and premises, (known as, &c.) by this deponent (*or* the said A. B.), demised to the said C. D., and which said (year's) rent is now due and unpaid.

11. *Stabling.*—For horse-meat, stabling, and attendance, provided by this deponent (*or* the said A. B.), at the said C. D.'s request.

12. *Keep of Cattle.*—For agisting and feeding cattle (*or* horses, *or* sheep, &c.,) by this deponent (*or* the said A. B.), at the said C. D.'s request.

13. *Work and Labour.*—For work and labour done and performed by this deponent (*or* the said A. B.), for the said C. D. at his request.

14. *Work by Servants, &c.*—For work and labour done and performed by this deponent (*or* the said A. B.), and his servants, and with his horses, carts, and carriages, for the said C. D. at his request.

15. *Work and Materials.*—For work and labour done and performed, and materials provided by this deponent (*or* the said A. B.), for the said C. D. at his request.

16. *"Doctoring."*—For work done and attendance given by this deponent (*or* the said A. B.), as a Surgeon and Physician, for the said C. D. at his request; and for medicines and other necessary things furnished by this deponent (*or* the said A. B.), for the said C. D. (and his family) at his like request.

17. *"Schooling."*—For work, care, and attendance performed and bestowed by this deponent (*or* the said A. B.), as a Schoolmaster, in the teaching and instructing one ——, the infant son of the said C. D. (*or* divers persons at the request of the said C. D.)

18. *Wages.*—For wages due and payable from the said C. D. to this deponent (*or* the said A. B.), for this deponent's (*or* the said A. B.'s) services as the hired servant (*or* Clerk for and) of the said C. D.

19. *Money Lent.*—For money lent by this deponent (*or* the said A. B.), to the said C. D.

20. *Money Paid.*—For money paid by this deponent (*or* the said A. B.), to the said C. D.

21. *Money Received.*—For money received by the said C. D., to and for the use of this deponent (*or* the said A. B.)

22. *Account Stated.*—For money found to be due from the said C. D. to this deponent (*or* the said A. B.), on accounts stated between them.

23. *Interest.*—For interest upon certain money due from the said C. D. to this deponent (*or* the said A. B.) upon a certain mortgage, &c., (*or* as the case may be.)

24. *Payee v. Maker of Note.*—For money due on a promissory note for —— pounds made by the said C. D., payable to this deponent (*or* the said A. B.), at a day now past (*or* on demand)—[*or* on a promissory note dated the —— day of ——, A.D. 185 , made by the said C. D., whereby he promised to pay —— months after the date thereof to this deponent (*or* the said A. B.) or order, the sum of —— pounds for value received.]

25. *Indorsee or Bearer v. Maker of Note.*—For money due to this deponent (*or* the said A. B.), as indorsee (*or* as bearer) of a promissory note made by the said C. D., for the payment of —— pounds to one X. Y. or order (*or* bearer) at a day now past, and by the said X. Y. endorsed (*or* transferred and delivered) to this deponent, (*or* the said A. B.), which said promissory note is now overdue.

26. *Indorsee v. Indorser of Note.*—For money due this deponent (*or* the said A. B.) as indorsee of a promissory note made by one X. X., for the payment of —— pounds to the order of the said C. D. at a day now past, and by the said C. D. endorsed to this deponent (*or* the said A. B.), and which note hath been refused payment by the said X. X.

27. *On a Mortgage.*—For principal and interest due from the said C. D. to this deponent (*or* the said A. B.), upon a certain Indenture of Mortgage dated the —— day of ——, A.D. 18 , made between the said C. D. and this deponent (*or* the said A. B.), whereby the said C. D. covenanted to pay the sum of —— pounds and interest to this deponent (*or* the said A. B.), at a day now past.

28. *Upon a Deed generally.*—Upon and by virtue of an Indenture (*or* articles of agreement) dated the —— day of ——, A.D. 18 , and made between the said C. D. and this deponent (*or* the said A. B.), whereby the said C. D. covenanted to pay this deponent (*or* the said A. B.), the said sum of —— pounds at a day now past.

29. *On a Bond.*—For principal and interest due on a Bond dated the —— day of ——, A.D. 18 , and made by the said C. D. to this deponent (*or* the said A. B.)

30. *On a Judgment of Q. B. or C. P.*—Upon and by virtue of a judgment of the Court of ——, for the sum of —— pounds, recovered by this deponent (*or* the said A. B.), against the said C. D., on the —— day of —— A.D. 18 .

31. *On a Division Court Judgment.*—Upon and by virtue of a judgment of the —— Division Court of the County of ——, whereby this deponent (*or* the said A. B.), recovered against the said C. D. —— pounds for debt (*or* damages) and costs.

The character in which the Plaintiff sues.—Referring to Form No. 22, we find the following direction: "If the Plaintiff sues in a special character, "as executor or the like, it should be stated in the "affidavit in what character he claims the debt." The subjoined forms are given to meet this requirement.

CHARACTER IN WHICH THE PLAINTIFF SUES.

32. *One of several Partners.*—Is justly and truly indebted to this deponent and one T. T. in the sum of —— pounds, for (*goods sold and delivered*) by this deponent and the said T. T. to the said C. D. at his request.

33. *Surviving Partner.*—Is justly and truly indebted to this deponent in the sum of —— pounds for (*goods sold and delivered*) by this deponent and one T. T. since deceased, to the said C. D. at his request.

34. *Husband and Wife.*—Mary B., wife of A. B., of &c, maketh oath and saith that C. D., of &c., is justly and truly indebted to the said A. B. and this deponent in the sum of —— pounds for (*goods sold and delivered*) by this deponent whilst she was sole and unmarried, to the said C. D. at his request.

35. *Executor or Administrator.*—A. B., of &c., Executor (*or* Administrator) of L. M., deceased, maketh oath and saith that C. D., of &c., is justly and truly indebted to this deponent in the sum of —— pounds for (*goods sold and delivered*)

by the said testator (*or* intestato) L. M., in his life time, to the said C. D. at his request.

The alterations necessary in the body of the Affidavit and in the Jurat.—These are few, confined chiefly to cases where the party is allowed by law to affirm, and where the deponent is a person who from his signature, or otherwise, appears to be illiterate, (See Rule 46) or by one who does not understand the English language.

ALTERATIONS IN AFFIDAVIT, &c.

36. *Affirmation by Quaker, &c.*—A. B. being one of the people called Quakers (*or* Menonists, &c.) doth solemnly affirm that C. D. of &c., is justly and truly indebted to this affirmant in the sum of ———, &c., (*proceed as in ordinary cases, except, instead of calling the party* "deponent" *call him* "affirmant.")

37. *Jurat when party illiterate.*

Sworn before me, at ———, in the County of ——, this —— day of ——, A.D. 18 , and I certify that the above Affidavit was read over in my presence to the above named A. B., and that he seemed perfectly to understand the same, and wrote his signature (*or* made his mark) thereto in my presence

A. B.

Clerk, &c.

38. *Jurat on Affirmation by Quaker.*

Affirmed before me at ——, in the County of ——, this —— day of ——, A.D. 18 .

A. B.

Clerk &c.

39. *Interpreter's Oath.*—"You swear that you have (if *already interpreted*) truly interpreted this affidavit to the deponent, and that you will truly interpret the oath to be taken by him.—So help you God."

(This form of oath does not appear in the affidavit, but is verbally administered by the Clerk.)

40. *Jurat where oath is interpreted to deponent.*

Sworn before me at ——, in the County of ——, this —— day of ——, A.D. 18 , by the deponent A. B., the contents of the above affidavit having been first read over and explained to him in the (*Gaelic*) language by Y. Z., who was first duly sworn to interpret the same.

A. B.

Clerk &c.

We have now gone through the variations, necessary in the Affidavit for Attachment, to meet the facts and circumstances of particular cases, and without pretending to have exhausted the subject, we have aimed at providing a form suitable to every case of common occurrence in the Division Courts.

BAILIFFS.—*Personal service of Summons.*—The proviso in the 24th sec. of the Division Court Act makes *personal* service on the defendant necessary, where the amount sued for exceeds forty shillings. Without pausing to consider how far this rule regarding personal service might be relaxed with advantage to the public, let us look at the subject itself as the law stands. Information as to what in law amounts to a personal service must be of value to Bailiffs, who have to combat the ingenuity of "hard cases," and are often compelled to resort to stratagems of all kinds to make personal service where defendants are "bent on keeping out of the way": officers suffer not a little in this respect, for, like every one else in this country, time is money to them. Before speaking of "services," a hint may not be amiss touching cases where parties *keep concealed to avoid service of process*, and, in consequence, no service is made. If in such cases bailiffs made plaintiffs aware of the fact, and of the right to sue out an attachment, under the 64th section of the Act, parties would probably avail themselves of the right and attach the defendant's property. One or two such cases in a Division acted on in this way, would bring home knowledge to the parties and the public that evading the service of a Summons *does not operate advantageously for a debtor;* and the *result* would be less difficulty with "personal services."

Although the due service of the summons is the very foundation of the Judge's jurisdiction—and by the section above referred to that service must be *personal* where the claim exceeds 40s.—it is not absolutely necessary to put the copy of the summons into the corporal possession of the defendant; for whether the bailiff touches him or puts it into his hand is immaterial for the purposes of personal service; it is sufficient if the officer sees the party, or speaks with him, and draws his attention to the summons and leaves the copy for him. Thus, "applying the principles of practice in the Superior Courts," after informing a defendant of the nature of the process and tendering a copy, he refuses to receive it—then, placing it on his person—or throwing it down in his presence—or leaving it at his house, would be sufficient personal service. Again, if a defendant locks himself in a house, putting the copy through the crevice of a door to him—or, if known by the bailiff to be secreted in a house, leaving the copy with some one in the house for him—or, if a letter covering the copy of the summons be by some means given to the defendant, and it can be shewn that he took out the copy—or, if left with some one for him and it is proved that it came to his notice in due time—in these, and in similar cases, *strict personal* service may be dispensed with. Should the defendant appear at the Court and object to the sufficiency of a service, but refuse to say whether or not the copy of summons came to his hands before the time of service had expired, it is probable that, with other circum-

stances, the Judge would hold it to be sufficient proof of the service, and equivalent to personal service.

The object of the summons is to give defendants timely notice of the action and claim against them, and keeping this in view the bailiff should do all in his power to accomplish that object; the Judge will determine, on the facts laid before him, if the requirements of the Statute have been sufficiently complied with. In conclusion we would observe that bailiffs must each ascertain by experience what the Judge of his County regards as a *due service* of the summons, and govern himself accordingly; for *due* service is not to be understood in the sense absolutely proved, but that which is sufficient *to satisfy the mind of the Judge* that the process has been served.

SUITORS.

ARBITRATION.—*Instructions for the due and orderly holding of*

[CONTINUED FROM PAGE 23.]

The first meeting may not afford time to enable the arbitrators to get through with all the evidence, in which case they can adjourn until the following day—taking care to inform both parties thereof; or the absence of a material witness may form the ground for postponing a meeting for several days. In the latter case a written appointment had better be made out and given to the parties as above directed; and indeed, if the meeting is intended to be a final one, it would be well to state the fact in the appointment, thus—"*for proceeding on and concluding this reference.*" The most inexpensive and best reference is to a single arbitrator, but if two or more have been appointed, they should be together when the parties and their witnesses are examined.

After all the evidence on both sides is gone through, the arbitrators consider the matter and come to a decision. Of the principles that should guide to a decision we do not intend to say anything; for although it is considered more expedient to respect the rules of evidence and law, yet the arbitrators, being constituted by the parties absolute judges both of law and fact, may make their award according to equity and good conscience, without regard to the strict rules of law, either as respects evidence or the rights of the parties. We may, however, add, that arbitrators must be together rightly to determine a matter, and that their determination should be the result of judgment, and not settled by chance—as drawing lots or the like. Should there be three arbitrators, the majority usually has the power to decide; if but two, and the Rule of reference provides that in case of disagreement an umpire is to be chosen, the choice of such third party should be the result of the exercise of a sound discretion. The appointment had best be in writing, and endorsed or annexed to the order of reference; it may be as follows, or to the like effect:—

In the —— Division Court.
County of ——

Between A. B., Plaintiff,
and
C. D., Defendant.

We the within named arbitrators (*or* "We the arbitrators in the annexed order named"), do hereby nominate and appoint P. P., of ——, the third person or Umpire, to act and decide as within (*or* "by the said order"), directed.

Dated this —— day of ——, A.D. 18 .

H. H. } Arbitrators.
R. R. }

The arbitrators may, immediately after entering on the reference, and before disagreement, appoint their umpire, and this is recommended as the better course, for there is generally less difficulty in concurring in a judicious choice before disagreement than after: if appointed in the first instance, the umpire could be present and hear all the evidence, by which means unnecessary expense would be prevented.

The award or umpirage must be made within the time limited by the order; after that time expires, the arbitrators' authority is at an end. The award must be in accordance with the powers conferred by the order of reference; it must be certain—not ambiguous or doubtful in its language—and final, deciding in terms or substance on all the matters referred. No set form of words is essential to the validity of an award, but the "General Rules, &c., for Division Courts" contain a form which should in all cases be used to avoid objections. The award may be endorsed on the order, (this is the best course) or annexed to it, or be on separate paper. In order to further assist, we give the general form of award (Form 26):—

FORM OF AWARD.—*Where all costs are in the discretion of arbitrators, who award in favor of the plaintiff for a certain sum, and that the defendant shall pay all the costs—(to be endorsed on the order.)*

After hearing and considering the proofs laid before us in the matter of the within reference, and in full determination of the matters to us referred, we do award that the within named A B. (*the plaintiff*) is entitled to recover from the within named C. D. (*the defendant*) the sum of ——, together with the costs of this suit, and also the sum of ——, the costs of this reference, and that the same shall be paid by the said C. D within (*ten*) days, and that judgment be entered in the within mentioned cause accordingly.

Dated this —— day of ——, A.D. 18 .

H. H. } Arbitrators.
R. R. }

To simplify proof of the execution of the award,

it would be well to have a subscribing witness thereto, or at least that the arbitrators should sign in the presence of some one who could afterwards swear to the affidavit of execution; and if there be two or more arbitrators they should sign in the presence of each other.

An award is said to be *made* as soon as it has been signed by the arbitrators or umpire, and to be *published* as soon as the arbitrators or umpire apprize the parties that it is ready to be delivered. The moment an award is made and published, the arbitrators, or umpire, are powerless, and cannot afterwards alter it. When the award is made, the arbitrators or umpire should notify the parties that it is ready for delivery, and it should be delivered to the party in whose favour it is on his paying the arbitrators their reasonable charges for acting on the reference. In conclusion, we again remind the parties interested in a reference that if the time within which an award is to be made, according to the terms of the order of reference, is allowed to pass, no award can be legally made.

ON THE DUTIES OF MAGISTRATES.

(SKETCHES BY A J. P., CONTINUED FROM PAGE 25.)

SOME GENERAL OBSERVATIONS ON MATTERS ANTECEDENT TO THE INFORMATION.

HAVING briefly noticed some general rules in reference to the law of summary conviction, especially as relates to the person before whom, within what time, and in what locality, complaints should be laid, we now come to *details* of the proceedings before magistrates in their judicial capacity.

Before the passing of the 16 Victoria, cap. 178, there was, we may say, no general, statutory provision, regulating the course of proceedings in summary convictions before magistrates, and no uniform practice prevailed.(a) This defect was remedied by that statute which traces out and defines the procedure very fully; thus giving confidence to magistrates in the discharge of their multiform duties, and securing their decisions against reversals on technical grounds; for the act not only makes ample provision for regulating procedure, but provides also a complete set of forms applicable to the several stages of a summary conviction.(b) It may be observed, the provisions of the 16 Vic. c. 178 will in general regulate all proceedings which partake of a *criminal* character—where the Justice has the power of summary punishment by fine and imprisonment, or by enforcing compensation for the injury—while in matters of a *civil* nature,—as those springing out of contract—the proceedings, it is apprehended, will be regulated by the particular act which gives the jurisdiction to magistrates. These sketches, unless otherwise mentioned, are to be considered as treating of the former branch of cases—those partaking of a criminal character.

For some of the injuries which may be made the subject of a summary proceeding before magistrates, the law allows a proceeding by Indictment, and gives also a remedy by civil action for the injury sustained. Thus, in cases of assault and battery, the party may bring a civil action, prefer an indictment, or proceed under the law for summary conviction. The choice of remedy for injury or injustice is therefore often important, at least in respect to proceedings before magistrates as judges to convict—for in some of the statutes giving this power, there is a provision that the magistrate's conviction shall conclude the matter,(c) and his certificate thereof is a complete bar to the adoption of any other proceedings for the same injury.(d) In favor of the adoption of a complaint before magistrates with a view to a summary conviction, may be urged—that the party aggrieved can, in most cases, be a witness on his own behalf,—and that the proceeding is speedy and inexpensive.(e) On the other hand, if the injury is of magnitude, and calling for damages and compensation is the party's main object, the civil action for damages is the suitable remedy—and the indictment will not have the effect of depriving the injured person of his right to recover damages as a conviction before a magistrate would.

Magistrates will do well to inform complainants on this head, or at least make them aware that the summary proceedings will be a bar to a civil action to recover damages for the injury sustained.

(a) The single enactment on the subject was 2 Wm. IV. c. 4. Each particular statute conferring power on Magistrates to determine summarily, contained, as a general thing, a suitable form of conviction for their guidance; the 2 Wm. 4, c. 4, gave a *general* form of conviction for all cases, in which the Legislature had not provided a special form, to be filled up, and used, as circumstances required. This statute also made one Justice competent to receive the information,—even in those cases in which the conviction was required to be by two justices at least,—and also to issue a warrant to enforce a conviction, made by two or more Justices, and contained other minor provisions which need not be referred to. At best it was of little assistance to magistrates, and the constant additions to their duties, and the innumerable difficulties in practice which obstructed them, presented considerations to the Legislature, which produced an act remedying the difficulties magistrates were under—viz., the 16 Vic. c. 178.

(b) The 16 Vic. c. 178, was introduced by the Hon. Mr. Justice Richards, when Attorney-General—it is after the model of the English Act, but in many respects altered and improved, which will be seen as we proceed with our subject. We fear, however, that one clause in particular, the 31st, may create some difficulty in construction, and until its scope is settled by judicial construction, will diminish to us the value of decisions on the English Act.—If the Acts intended to be repealed had been specified, this difficulty might have been avoided.

(c) The 4 & 5 Vic. c. 25, sec. 62, and 4 & 5 Vic. c. 26, sec. 26, for example.

(d) Generally so by the particular enactment, and see R. vs. Robinson, 12 Ad. & Ell. 672—Skuse vs. Davis, 10 Ad. & Ell. 635.

(e) The U. C. Division Courts Extension Act of 1853, enlarges the jurisdiction of these Courts so as to embrace all personal actions (subject to the exemption in the 1st sec.) when the damages do not exceed £10. In these Courts the plaintiff may be examined as a witness on his own behalf at the instance of the Judge—and the proceedings are simple and inexpensive; When, therefore, the malicious injury complained of does not involve a loss beyond ten pounds, and the complainant's chief object is compensation for the grievance, he should seek his remedy before the Division Courts, where there is power to award him compensation in the shape of damages.

In speaking of matters previous to information, the duty of a magistrate to act as a peace-maker may not be omitted.

When men's passions are strongly moved—hot with resentment at some trifling injury, they rush to a magistrate, and tender information more to gratify their vindictive feelings than for redress of any real grievance.

It is strongly urged on magistrates to be cautious in lending a too ready ear to complaints of a trifling nature, or yielding at once to the solicitations of passion for prompt and severe legal measures against an adversary.

A composing, pacific spirit, should characterise a magistrate; without it, the full and salutary effect of his office cannot be produced.(f)

We shall now proceed to consider the proceedings in the order in which they occur.

The Information or Complaint:—the Summons or Warrant:—the Hearing or Trial:—the Conviction or Judgment:—and the Proceedings subsequent to Conviction; ranging minor and collateral matters as they may appropriately fall under these general heads. First, then, of *The Information or Complaint.*

(TO BE CONTINUED)

ON THE DUTIES OF CORONERS.

(BY A BARRISTER-AT-LAW.)

For the "Law Journal."

BEFORE proceeding to notice the duties pertaining to Coroners, it may not be uninteresting to give a slight sketch of an office, which, honourable from its antiquity, can be traced back to the wisdom of our Saxon ancestors. The Coroner (from the Latin *Coronator*) is so called "because he hath principally to do with pleas of the Crown, or such wherein the Sovereign is more immediately concerned." According to Lord Hale, the Chief Justice of the Queen's Bench is, *virtute officii*, the Chief Coroner of England, and may, if so disposed, act in that capacity in any part of the Kingdom.(a) Long anterior to the Norman Conquest, Coroners, together with Sheriffs, Magistrates, and the subordinate officers of the peace, were elected by the people; and there still exists the writ at common law *de coronatore eligendo*, in which the Sheriff is commanded that he cause to be elected, by the Freeholders of his County, some fit and proper person to fill the office of Coroner. There are various exceptions, however, to this mode of appointment, which it were unnecessary here to do more than allude to, such as the power of appointment vested in the Sovereign by stat. 28, Edw. III. ch. 6, and the privileges conferred by charter on certain bodies corporate. The statute of 3, Edw. I. ch. 10, restricted the selection to a particular class, and enacted that none but "lawful and discreet Knights" should be chosen; and it will amuse our readers not a little to learn that an instance is recorded, in the reign of Edward III. of a Coroner being *removed* from his office for no other reason than that he was a Merchant! That the office was held in very high repute in Chaucer's time (about A.D. 1400), may be inferred from his quaint description of the "Franklein," in the *Canterbury Tales*:—

> At Sessions ther was he lord and sire,
> Ful often time he was Knight of the shire,
> * * * * *
> A Shereve hadde he ben, and a Coronour,
> Was no wher swiche a worthy vavasour.

For a long time the office was purely honorary, the statute of 3, Edw. I. ch. 10, expressly forbidding Coroners to take reward for their services, under penalty of a heavy forfeiture to the Crown; nor was it until the reign of Henry VII. that fees were made payable by Statute. The Coroner's appointment is for life, "but he may be removed by being made Sheriff, which is an office incompatible with the other, or by the writ *de coronatore exonerando* for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it: and by the stat. 25, Geo. II. ch. 29, extortion, neglect, or misbehaviour, are also made causes of removal."(b)

Coroners in this country receive their appointment from the Governor-General, by commission under the seal of the Province—two or more being commissioned for each County, according to its extent and population, and others from time to time associated as the public necessities demand.(c) The Provincial enactments bearing upon the office are the 4th and 5th Vic. ch. 24, and the 13th and 14th Vic. ch. 56, but very many of the duties will be found in the Imperial Acts of 3 Edw. I. ch. 10; 4 Edw. I. stat. 2; 14 Edw. III. stat. 1, ch. 8; 28 Edw. III. ch. 6; 3 Hen. VII. ch. 1; 1 & 2 P. & M. ch. 13; and 25 Geo. II. ch. 29.

(f) Among the various ways in which his office enables a magistrate to promote the happiness of mankind, he is employed in a manner not only the most satisfactory to himself, but perhaps the most useful to others, when he acts as a peace-maker; when he removes secret animosities; puts an end to open quarrels; composes differences; prevents embryo law-suits, unites the jarring members of the same family, and preserves a general peace and harmony in his neighbourhood.—*Gisborne—Heathcote.*

The principle on which a certain Arabian magistrate acted, is sound to the core:—

A suitor came to him in a towering passion asking for relief; he was put off from day to day: at last he came coolly, told his case without passion, and immediately was done justice to, the magistrate saying, I refused to hear you before; I could not rely on what you said, because you were intoxicated with anger—the most dangerous of all intoxications.

(a) 2 Hale, 53.
(b) 3 Steph. Com. 32.
(c) There seems, however, to be no settled rule on the subject, for while in Simcoe—one of the largest Counties in the Upper Province—there are not more than some half dozen Coroners; in Halton, which is not half its size, there are *Eleven!* (See *Gazette* of 24th February.)

We will now enter upon our examination of the judicial and ministerial powers of Coroners, and, for greater convenience, will divide the subject into Six distinct heads, with minor divisions and sub-heads for each, viz. :—I. The power and duty of Coroners in relation to Inquests; II. Proceedings in relation to Inquests; III. Appearances to be noted in relation to the body; IV. Ministerial duties of Coroners; V. Coroners' Fees; VI. Punishment for dereliction of duty.

(TO BE CONTINUED.)

U. C. REPORTS.

GENERAL LAW.

In the Matter of Greystock and The Municipality of Otonabee.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

By-law—Tavern licenses—Sale of spirituous liquors—Imprisonment on failure to pay fine.

The Municipality of Otonabee passed a by-law on the 25th of March, 1854, enacting:

1. That there should be a license issued for one inn only where spirituous liquors should be sold, and that such inn should be in Peterborough East.

2. That persons applying for a license to keep such inn should produce a certificate from four municipal electors, residing in the locality where such house was to be kept, of his honesty and good moral character, and a certificate from the township treasurer that he had deposited a bond with such treasurer, made in favor of the reeve and his successors, approved by the councillors of the ward in which such tavern should be situated, binding him in £50, with two sufficient sureties in £25 each to abide by all the by-laws of the township council for the regulation of such houses.

4. That all tavern keepers obtaining license under this by-law should shut up their bar and bar-room at 10 p. m., and keep it closed on Sunday, and should not give or sell liquors to any person in a state of intoxication.

6. That persons wilfully neglecting, refusing, or failing to comply with the provisions of the preceding clauses of this by-law or selling by retail without license, should be liable to a fine of £5, or *failing to pay the same*, to twenty days' imprisonment.

9. That there should be *one shop license*, and no more, granted within the said municipality, and that such license should be granted to one of the store keepers in the village of Keene.

The reeve of the township swore that the by-law was passed because 244 out of the 489 electors had expressed themselves in favor of limiting as much as possible the sale of spirituous liquors, and that, at the last election, three out of the five were returned on the understanding that they would support such a measure.

Held, that these facts could not affect the question, that the first and ninth sections of the by-law, and so much of the sixth as related to imprisonment of offenders fined on failure to pay, must be quashed, and that the second and fourth sections were good. [Q. B. Mich's Term, 18 Vic.]

Eccles obtained a rule on the Municipal Council of the Township of Otonabee, to shew cause why the first, second, fourth, sixth, and ninth sections of their by-law No: 97, should not be set aside and rescinded, with costs to be paid by the municipality.

The by-law referred to was passed on the 25th of March, 1854. The first section provided, that after the passing of that by-law there should be license issued for one inn or house of public entertainment, in which spirituous and fermented liquors of any description should be sold, and no more; and that the said house should be in Peterborough East, within the limits of lot 30, in the 13th concession of Otonabee, and that £10 should be paid for such license.

The second section provided, that the persons who might apply for a certificate to enable them to obtain a license for keeping such house of public entertainment, should produce a certificate from four municipal electors residing in the locality where such house was to be kept, of their honesty and good moral character, and a certificate from the township treasurer that they had deposited a bond with such treasurer, made in favor of the reeve and his successors, approved by the councillors of the ward in which such tavern is situated, binding him in £50, with two sufficient sureties in £25 each, to abide by all the by-laws of the township council for the regulation of such houses.

The fourth section provided that all tavern-keepers obtaining license under this by-law, should shut up their bar and bar-room at 10 o'clock, P.M., and keep it closed on the Sabbath day, and should not give or sell any such liquors to a person in a state of intoxication.

The sixth section provided, that persons wilfully neglecting, refusing, or failing to comply with all the requirements, or violating any of the provisions of the preceding clauses of this by-law; or who should sell by retail, without such license, directly or indirectly, any spirituous or fermented liquors; should be liable, on conviction before any magistrate having jurisdiction within the municipality, on the oath of one competent witness, other than the informer, to a fine of £5, or, failing to pay the same, to twenty days' imprisonment.

The ninth section provided that there should be one shop license, and no more, granted within the said municipality, and that such license should be granted to one of the store keepers in the village of Keene, and that the payment for such license should be one pound.

It was sworn by the applicant that he was a resident freeholder of the township of Otonabee; that he was then keeping and had kept a tavern there for three years past; that this by-law was not in any manner submitted to the electors for their consideration; that in the township of Otonabee there were about four thousand inhabitants; that Peterborough East, mentioned in the by-law, is situated in the north-west corner of the township, at the distance of seven miles from his, the deponent's residence; and that his tavern possessed all the accommodation required by the by-law.

An affidavit was filed in answer to this application, made by the reeve of the township, in which he swore that this by-law was passed by the municipality in consequence of two hundred and forty-four municipal electors, together with a large number of other resident inhabitants, having expressed themselves in favor of limiting or prohibiting the sale of spirituous liquors as much as possible; that the whole number of electors was four hundred and eighty-nine; that at the municipal elections for 1854, three out of the five councillors were returned upon the test of their being in favor of such prohibition, and with the understanding that they would support such a measure.

That under those circumstances the Council, in what they considered a reasonable exercise of the discretion vested in them, passed this by-law, leaving one tavern to be licensed in Peterborough East, that being the most thickly populated and the most business part of the township; and limiting the shop licenses to one, in the village of Keene, there having been none, within the knowledge of the deponent, taken out for several years past for any other place in the township; that there were two temperance houses licensed in the village of Keene, and one in Peterborough East; and that the by-law now in question had been amended by one passed *on the 29th of September*, 1854, of which a copy duly verified was annexed to his affidavit.

This by-law provided that all fines imposed by the by-law now moved against, chap. 97, might, at the discretion and by the order of the convicting justice, be recovered by distress and sale of the goods of the offender.

Leith shewed cause.

The statutes referred to are noticed in the judgment.

Robinson, C. J., delivered the judgment of the court.

We are of opinion that, so far as regards the first section of

this by-law, it is not essentially different from a similar provision, which we held to be illegal and bad in the case of Barclay v. the Municipal Council of Darlington (12 U. C. R. 86); and that the ninth section, which confines the power of licensing shops in the whole township of Otonabee, in which spirituous liquors may be retailed, to one shop in the village of Keene, is for the same reason illegal. And I will only add to the reasons assigned for our judgment in that case, that we cannot allow our opinions to be influenced by such reasons as are given in support of this part of the by-law. So long as the legislature has not made the retailing spirituous liquors in shops and taverns illegal, no municipality can accomplish the same end in any other manner than by such a proceeding as the legislature has prescribed. They must see that they have the sanction properly given of a majority of the qualified municipal electors. Upon the affidavit made by the reeve, it is evident that some informal attempt has been made to ascertain the opinion of the electors, before this by-law was passed, which attempt did not shew that a majority were in favour of the prohibition, but the contrary.

No attention of course could be paid to the opinions of those, who, not being electors, would have no right to vote upon the question; nor could any notice be properly taken by us of the alleged test by which the municipal elections were endeavoured to be influenced.

Of course it may be and has been contended here, as it was in the case we have referred to, that the by-law does not impose an absolute prohibition, for it allows of one inn and one shop to be licensed in a township ten or twelve miles square, and containing four thousand inhabitants; and that it can therefore be no objection to it, that no previous assent of the electors had been obtained, because no measure short of an absolute prohibition can be legally submitted to them. This is undoubtedly true; but the real nature of the objection is, that such by-laws are in fact evasions of the statute, and it is plain in this case, as well as in the other referred to, that such was the intention. It is clear, from what has been stated in vindication of this by-law, that if the Municipal Council had felt satisfied that they could have obtained a vote of the majority of the electors in favour of the prohibition, they would have put their by-law in that shape. As it is, they have endeavoured to establish a virtual prohibition, without that express sanction of the electors, which the law renders necessary to an actual total prohibition literally imposed.

Until by some legislative measure properly passed it has been made illegal to obtain liquor by retail at an inn or a shop, we must regard the public as entitled to expect all reasonable accommodation in that respect, and the discretion given to limit the number of *inns* and *shops* in a township is not, as we think, legally exercised by making it impossible to obtain the accommodation except at one inn and one shop in sixty or seventy square miles of populous country.

That is not so much limiting the number of inns and shops as conferring an unfair monopoly upon one person of each class, who may, under such circumstances, without check, make the public pay what he pleases to extort. If the Law Society of Upper Canada, or the Medical Board, were authorised by statute to limit the number of practitioners in their respective professions, it would hardly be recognized as a reasonable exercise of such an authority if they were to allow but one lawyer and one doctor, and thus leave the whole community to the mercy of those two.

As regards the second section, we do not see why it may not stand consistently with the statutes 13 & 14 Vic. ch. 65, and 16 Vic. ch. 184, which appear to be the enactments now regulating the licensing of inns. Whether there might not be some difficulty in the way of enforcing the bond directed to be taken, we need not now consider.

The fourth section seems a reasonable and good enactment.

The sixth section is objected to on the ground that it authorizes imprisonment upon failing to pay the fine that may be imposed, without regard to the fact of the defendant having goods from which the fine may be made. And we are of opinion that the provision which authorizes imprisonment, not as a punishment, but only in default of payment of the fine imposed, without any attempt being first made to levy the money by distress, is illegal and void.

We think, therefore, that the first and ninth sections of this by-law must be quashed, and so much of the sixth as relates to imprisonment of offenders fined on their failing to pay; and that the rule, as regards the remainder of the sixth section, and the second and fourth sections, must be discharged.

Wilson v. The Ontario, Simcoe and Huron Railroad Union Company.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

12 Vic. ch. 196. sec. 18—*Obligation to fence—Request—Insufficient fence put up by the Plaintiff himself.*

The defendants by their charter 12 Vic. ch. 196. sec. 18. are bound to fence off their railway from the adjoining lands, in case the owners of such lands shall at any time so desire.

The plaintiff, owning adjoining lands, made a verbal request on defendants' resident engineer to erect a fence and as this was not done he put up a sort of enclosure himself, and some bars in it being left down his cows got on the track and were killed.

Held, first, that the request made was sufficient.

Secondly, that the fact of the plaintiff having erected an insufficient fence for himself, and neglected to put up the bars, could not dispense with the duty imposed upon the Company, or affect his right to compensation.

[Q. B. Mich's Term. 18 Vic.]

Case.—The declaration stated, that after the passing of the act to incorporate the defendants, and at the time of the committing the grievances complained of, the plaintiff was proprietor of lands, and was using and farming the same, and had thereon a large stock of cows and other cattle grazing and running at large on said land; and that the defendants had commenced to construct their railroad through the plaintiff's land, and took a portion, extending across the same, from one side to the other, and prostrated and removed the fences at the ends thereof, and threw the said portion open, so that the cattle of the plaintiff could escape from the residue of the plaintiff's land and rove at large, and other cattle could enter on the same, and the plaintiff's cattle could cross and feed upon and about the track of the railroad: that the part of the railroad crossing the plaintiff's land had long been and was finished and in operation, and locomotives and cars of defendants were running thereon; that afterwards, and before the committing, &c., the plaintiff required the defendants to separate and keep separated, by good and sufficient fences, the portion of land over which the railway ran from the remainder of the plaintiff's land, and it became thereupon the defendants' duty, within a reasonable time, to make and construct such fence. Yet the defendants did not at any time construct, &c., but wrongfully neglected, by means whereof the cows of the plaintiff escaped through the said portion of land so laid open, and were lost.

Pleas—1st. Not guilty, by statute. 2nd. Traverse of request to fence.

At the trial at Barrie, in October 1854, before *Draper, J.*, the plaintiff proved, that he stated to the defendants' resident engineer, in the fall of 1853, or towards the winter, that he required a fence to be put up through his lot, which was nearly all in a state of nature. The engineer said he would see further into it, and referred the plaintiff to the contractor. The trains had then been running two months. The engineer stated that he thought at that time there was no fence on the plaintiff's lot, not even round his clearing, which was only four or five

acres then. It appeared that after this the plaintiff made a slashed fence upon his own land, on each side of the railway. There was no proof that the defendants did anything, or that the fence made by the plaintiff, such as it was, was done in pursuance of any arrangement with the defendants. The engineer stated, that the slashing is usually done parallel to the track, the trees not being moved, but allowed to lie where they fall. The plaintiff's cows might, according to some of the evidence, have got through the slashing, but the plaintiff himself told the defendants' engineer that his cattle were browsing on his own land: that he had made an opening through the slashing, to haul out cord-wood off his land, and put poles across the opening to keep his cattle in: that one evening he neglected to put these poles up, and on the following day two of his cows were killed on the track by the defendants' cars—a fact which was proved by other witnesses.

It was objected for the defendants, that as the plaintiff had himself put up a fence, the defendants were not bound to do it. This was overruled; and the jury were asked to decide whether there had been a request to defendants to fence, and if so, whether the defendants had, within a reasonable time, complied with such request, and put up a sufficient or indeed any fence; and if they found both these points for the plaintiff, they were told he would be entitled to a verdict, with nominal damages, for the defendant's breach of duty. With regard to the cows, the jury were directed to find whether they were killed by the defendants' cars in consequence of defendants not having fenced off their railway; though if they thought the plaintiff had contributed to this loss by his own wilful or negligent act—as by removing a slash fence put up by plaintiff, and omitting to keep the opening so made secured—they were told he ought not to recover. That in deciding whether a reasonable time had elapsed for the defendants to make the fence, they might take into account the season of the year at which the plaintiff required the fence, apparently in December or January, and the lapse of time until the cows were killed, which was in March following: or,—if they only gave damages for the breach of duty, and not for the cows,—until the 19th of April, when the writ was sued out. And that a demand, though only verbal, on the resident engineer in charge, was evidence of a demand on defendants to make the fence.

They found for the plaintiff, and damages £15.

Phillpotts obtained a rule nisi for a new trial on the law and evidence, and for misdirection.

ROBINSON, C. J., delivered the judgment of the court.

Upon the facts proved, we think the plaintiff's right to recover cannot be denied; and it is satisfactory that the damages are reasonable, for these occurrences are unfortunate in their effect upon the interest of a company whose exertions have conferred great benefit upon the community, and perhaps with the greatest care accidents will occasionally take place.

On the other hand, if the defendants have neglected a duty plainly incumbent upon them, especially by a positive statute, and an individual suffers loss in consequence, it is natural that he should seek recompense.

We think, as the learned judge did upon the trial, that the Company received sufficient notice of the plaintiff's desire to have the track fenced in by the request made to the resident engineer.

The obligation of the Company to fence in the track within a reasonable time after being requested by the adjoining proprietor, is imposed upon them in plain terms by the statute 12 Vic. ch. 196, sec. 18.

The jury considered that a reasonable time had elapsed after the request. And the obligation of the Company to put up a sufficient fence, such as the statute directs, was in no manner put an end to or suspended by the circumstance of the plaintiff having, in the absence of such fence, put up on his own land some kind of inclosure between him and the track; nor is his claim to compensation affected by that inclosure proving insufficient, or by his leaving open the bars which he had generally kept up in it as described. They had no right to expect him to keep up a fence there except for the preservation of his own crops, not for guarding against their railway cars, because that had been made the duty of the Company. We do not think that upon the facts of this case there was any room for a question about the right to nominal or substantial damages. The plaintiff, we think, was either entitled to recover for the loss he had suffered, or had no right to a verdict at all; for the mere neglect of their duty by the Company would give him no right of action unless he suffered damage in consequence of it, and such a damage as he sued for.

Rule discharged.

U. C. COUNTY COURTS.

(County of Frontenac.—Kenneth Mackenzie, Judge.)

REG. EX. REL. POMEROY *v.* WATSON.

Quo Warranto—Relator's interest—Acquiescence—Scrutiny—Returning officer—Costs.

A relator's statement that "he has an interest in the election as a Municipal voter" need not be verified by affidavit.

A defendant having acquiesced in an irregular election, cannot afterwards be permitted to object to it on that ground.

Twenty-six persons having voted twice for defendant, the Judge subtracted twenty-six from the gross amount of votes recorded for defendant, whereby relator had a majority of nine, and was accordingly declared entitled to the seat.

A returning officer having acted bona fide, and defendant having procured a written legal opinion to be sent to him, by which means he obtained the seat,

Held. Defendant must pay the costs of making returning officer a party to the suit.

A writ of summons in the nature of a quo warranto was issued in this case on the fiat of Judge Mackenzie, calling on the defendant to shew cause why he usurped the office of Councillor of Ward No. 4 of the united townships of Portland, Hinchinbroke and Kennebec. The facts were as follows:—

At the close of the first day's polling the relator had a majority of 28 votes. The poll-book used for the first day was not sworn to by the returning officer, as directed by 16 Vic. ch. 181, sec. 10. Both parties were aware of this irregularity, but on the morning of the second day a fresh poll book was procured by some friends of defendant, and the returning officer was required to cancel the first day's proceedings and commence *de novo*. This second poll book was not properly sworn to. The returning officer did as he was required, tore up the poll book used on the first day, declared the proceedings and votes of that day null and void, and began anew. The relator objected in vain, and twenty-six voters who had voted for defendant on the first day voted for him again on the second day. The defendant had a majority of 45 on the second day, was declared elected, and accepted the office. The returning officer was made a party.

Draper appeared for the relator: The *Solicitor-General* for the defendant; and *Fraser* for the returning officer.

The *Solicitor-General* objected that it was not shewn that relator had an interest in the election, either as a voter or candidate; that there was no copy of the whole book put in evidence by the relator; and that neither party was entitled to the office, by reason of the illegality of the proceedings. Reg. ex rel. Preston *vs.* Preston, 2 Cham. Rep. 178.

Draper replied that it was not necessary that the relator's interest should be verified by affidavit, Reg. ex rel. Shaw *vs.* Mackenzie, 2 Cham. Rep. 36, Reg. ex rel. Hellwell *vs.* Stephenson, 1 Cham. Rep. 270. That it does not lie in the defendant's mouth to question the legality of the proceedings, for he has acquiesced in all the irregularities, and thereby waived his right. The defendant procured himself to be returned, took the oath of office, took his seat in the Council, voted therein, and now defends the election; he cannot therefore complain of any irregularities so as to prevent relator's having the seat.—Mitchell *vs.* Adams, 2 Cham. Rep. 203. In re. Charles *vs.* Lewis, 2 Cham. Rep. 171. Rex. *vs.* Trevenen, 2 B. & A. 339. Rex. *vs.* Parkyn, 1 B. & A. 690. If defendant's election was illegal he should have disclaimed.

Fraser, for returning officer, contended that having acted bonâ fide and under legal advice, procured for him by defendant, he ought not to be saddled with costs.

MACKENZIE, Judge.—The case of Reg. ex rel. Shaw *vs.* Mackenzie, 2 Cham. Rep. 36, decides that it is not necessary to shew the interest of the relator by affidavit—a statement of it will suffice. I cannot say that it would be irregular in the relator if he had put no part of the poll book in on his side. All that I think necessary for him in the first instance is to shew on affidavits a statement of the proceedings in a summary way, and the result of the polling. It is for the defendant, who defends the seat, to put in a copy of the poll book. In the present case, the defendant himself has furnished the second day's poll, and the relator the first, so that both parties have furnished all that can be required on that point. The question, then, is not whether the defendant should be removed from his seat in the Council, for removed he must be, as he usurps an office to which he never had a shadow of right, and to which he should never have been admitted. The questions are, whether there should be a new election for the ward, or whether I should order the defendant to be removed, and the relator to be admitted to his place at once, and who should pay the expenses of the present proceedings.

I think that the learned counsel for the relator has stated the law correctly. The defendant cannot be allowed to say that he has violated the law from beginning to end in this matter, and be allowed to depart with impunity. The defendant admits he had no right to take his seat, and instead of disclaiming under the statutes he comes into Court to defend, knowing that he had no colour of right to the seat he now usurps. What did he do? He took the oath of office, he took his seat in the Council, voted for the Reeve, and took part in the proceedings of the Council, the same as its other members had. If a defendant, under such circumstances, would be allowed to come into Court to take advantage of his own wrong, and say,—I have done all this, still there was no legal election,—it would be an uprooting of all principle and propriety. In Cole's treatise on Quo Warranto, I find it laid down, the Court will not permit a Corporator to file an information against another for an objection of title which applies equally to his own or those under whom he claims, for he must be taken to have recognized the validity of his own election, and therefore cannot be permitted to call in question another standing on precisely the same grounds. In the present case, then, the defendant cannot be permitted to call in question the legality of an election under which he claims to be councillor for the ward in question. In Rex. *vs.* Slythe, 6 B. & C. 240, Lord Tenterden, in giving the judgment of the Court, states: "It has been generally a rule of Corporation law, that a person is not to be permitted to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately derived from that election." On the principle laid down here it may be asked, if the relator has a clear majority of all the votes polled at this election, has he not a title as against the defendant, to the office the defendant now enjoys under the same election? And to follow out the argument further, it may be asked, can the defendant be permitted to impeach a title conferred on the relator by an election in which he has concurred, and under which he holds the title he has to the office he now fills of councillor? From what source did the defendant derive his title to vote for the reeve? From what source did he derive his title to sit, vote, and take part in the proceedings of the Council? From the election under which the relator claims to be admitted to the office of councillor for Ward No. 4. They it is clear that both relator and defendant claim title from the same source, the same election, and the question is, which of them has the lawful title? And the lawful title is in him who had the majority of the votes polled on both days—that I rule to be the law.

The whole matter is reduced down to a question of scrutiny between the parties. Two copies of Collector's Rolls were put in: they are both alike except as to one name, that of Moses Spike, who did not reside in the Ward. At the close of the poll on the first day; 60 votes stood recorded for the relator, Pomeroy, and 32 votes for the defendant, Watson, giving a majority of 28 to the relator, then. On the second day 17 votes had been polled for the relator, and 62 votes were recorded for the defendant, thus giving the relator a gross number of 77 votes, and the defendant 94.—But 26 of the persons who voted for the defendant the second day voted for him on the first day also; or in other words, voted twice. The 26 votes will require to be deducted from the 94 votes, the gross number received by the defendant, which when done will leave the relator 77, defendant 68—majority for relator 9 votes over the defendant on the whole poll. In my opinion the relator has made out a good lawful title to the office which the defendant has been usurping for some time. I therefore adjudge and determine that the defendant, Joseph Watson, hath usurped and still doth usurp the office of township councillor for Ward No. 4 of the United Townships of Portland, Hinchinbroke and Kennebec, and I do order that he be removed therefrom and be absolutely forejudged and excluded from further using or exercising the same. And I do further adjudge, that the relator, William Pomeroy, is entitled in law to be received into and exercise and enjoy the same; and I order that he be received and admitted accordingly.

In Reg. ex rel. Dundas *vs.* Niles, 1 U. C. Cham. Rep. 198, Mr. Justice Burns held, that as the defendant or his agent were privy to if not instigating the returning officer to his illegal course, the defendant must pay the costs. The returning officer acted wrongly in this matter; but was not all he did with the privity of the defendant or his agents, and, indeed, at his and their instigation? Therefore the defendant must pay the costs.

Judgment for relator.

(County of Frontenac—Kenneth Mackenzie, Judge.)

REG. EX REL. KIRK *vs.* ASSELSTINE.

Quo Warranto—Riot at Election—Costs.

Where there was great riot and disturbance at an election, so defendant's voters could not get to the poll:—

Held, per MACKENZIE, J., there ought to be a new election.

Where defendant caused three votes to be polled for him out of the Ward, and after the hour of closing the poll on the second day, so as to get a majority:—

Held, there must be a new election.

When a new election is ordered, the relator must recover his costs.

The Solicitor-General, Burrows and *Draper*, for relat r; *J. O'Reilly* for defendant.

MUNICIPAL CASES,

(Digested from U. C. Reports)
From 12 Victoria, chap. 81, inclusive.
(Continued from page 10.)

ELECTIONS.

VII. *Summons in the nature of a quo warranto. Power of Judge under—Sufficiency of allegation of Relators' interest—Proof—Qualification for City of Kingston—Costs—* 12 Vic. c. 81, s. 146; 13 & 14 Vic. c. 64; 13 & 14 Vict. c. 51, 9 Vic. c. 75.

DRAPER, J.—The Practice Court has power to issue an order for a summons in the nature of a "quo warranto," under 12 Vic. c. 81, sec. 146, amended by 13 & 14 Vict. c. 61, Sch. A. No. 23,(a) and 13 and 14 Vict. c. 51, sec. 3.

Where a relator declares that he has an *interest in the election* as a voter for said ward; this coupled with a previous complaint that defendant was *unduly elected* alderman, &c., sufficiently identifies him as declaring himself to be a *municipal voter*, though he does not use the precise term *municipal voter*, required by the stat. 12 Vic. c. 81, sec. 146.

An objection that, though elector's interest is sufficiently alleged there is no sufficient proof of it, to enable the Court or Judge to order the issue of the writ, cannot be urged on the return of the writ, where such allegation is not denied, and no proof offered to shew that relator had not the interest claimed.

The interest of the relator is not established by the ordering of the writ.

It is not necessary, under the 9 Vict. ch. 75, sec. 13, (incorporating the city of Kingston) that the property should be assessed in the name of the person possessed of it to his own use. A landlord is so possessed whose tenants occupy the premises, and he may put together real properties, some occupied by himself and some by tenants, to make up the assessed value required by the statute.

Reg. ex rel. Shaw v. Mackenzie, 2 Cham. Rep. 36.

VIII. *Qualification for Town Councillor of Bytown at Election held in January,* 1851—*Relator's statement, how treated—Course when voters had no notice of objection to candidate for whom they voted.* 10 & 11 Vic. c. 43; 12 Vic. c. 80-81; 13 & 14 Vic. ch. 64, sec. 17, ch. 67, ch. 88.

DRAPER, J.—The qualification necessary for a Town Councillor for Bytown, at an election held in January, 1855, is that set forth in 10 & 11 Vic. c. 43, sec. 5. He must be an inhabitant *householder*.(b)

A relator's statement supported by his affidavits looked upon as a material traversable allegation in a declaration; and if defendant omit to answer it, he must be taken to admit that it is true.

Where it does not appear that the voters at an election had notice of any objection to the candidate for whom they voted (though a valid one exists) a new election will be granted; but the relator, though next in order to him, will not be declared entitled to the office.

Reg. ex rel. Harvey v. Scott, 2 Cham. Rep. 88.

IX. *Quo warranto—Abandonment of first summons—Power of Judge in Chambers—Qualification for Township Councillor.* 12 Vic. c. 81, s. 65; 14 & 15 Vic. c. 109.

The writ of summons which first issued in this case was abandoned for informality, before cause shewn; not by leave of the Court, or by quashing the first writ, but merely at the will of the relator, he having served a notice on the defendant that he need not appear to such writ, and the other papers served on him, he (the relator) having abandoned the same.

On the argument, it was objected, that under these circumstances it was not competent for the learned Judge to order the issue of a second writ of summons, but

Held, by SULLIVAN, J., that the Judge by whose order the writ of summons issued, standing in the place of the Court, it was not competent for the Judge in Chambers to review the proceedings had before the Judge so put in the place of the Court, and consequently that he could not entertain the objection.

Held, also, that to entitle a person to be elected a township councillor under 12 Vic. c. 81, s. 65, and 14 & 15 Vic. ch. 109, it is necessary that he should be rated *by name* on the Assessor's Roll.

Reg. ex rel. Metcalf v. Leuart, 2 Cham. Rep. 114.

Confirmed. 10 U.C.R. 89.

X. *Qualification of Township Councillor—Collector's Roll—Costs.* 14 & 15 Vict. c. 109.

BURNS, J.—Since the 14 & 15 Vict. ch. 109, Sch. A. No. 4, it is not necessary to the qualification of a township councillor, that his name should appear on the Collector's Roll.(c)

Judgment being in favor of the defendant, costs were adjudged against the relator, *he bringing* the defendant before the Court upon a purely legal question.

Reg. ex rel. Laughton v. Baby. 2 Cham. Rep. 130.

XI. *Municipal Elections—Disclaimer—Costs.*

Where defendant personally contested the election: but on its being moved against, sent in a disclaimer, praying to be relieved from costs, because being duly elected he was obliged to accept the office under a penalty.

Held, SULLIVAN, J., that there appeared no ground why he should be so relieved.

Reg. ex rel. Featherstone v. McMonies. 2 Cham. Rep. 137.

XII. *Assessor and Collector of Taxes ineligible as Candidate—Contested election—Notice of disqualification—New evidence—Revision of judgment.* 12 Vic. c. 81, s. 152.

A relator, in his statement, claimed that he was duly elected, and ought to have been returned; objecting that the defendant was disqualified, being at the time of his election both the Assessor and Collector for the ward for which the election was holden, and as such was entitled to receive fees or remuneration out of the public rates for his services; and that it was his duty to furnish and verify the roll of electors which was to govern the Returning Officer. There was in the statement no allegation that any public notice was given at the election that the defendant was ineligible, and that votes given for him would be thrown away. But in his affidavit, the relator swore that before the election he objected that the defendant was incapacitated for the reasons stated; and at the close of the poll protested against his return.

(a) The 13 Vict. c. 54, s. 10, repeals and re-enacts this section, in this respect in terms analogous therewith.

(b) The 18 Vic. c. 23, erects Bytown into a City under the name of the City of Ottawa; and sect. 3 enacts, That all the provisions of the U. C. Municipal Corporations Acts, generally, shall extend and apply to the said City of Ottawa.

(c) This section is repealed by 16 Vict. ch. 181, sec. 10, declaring the qualification of a Township Councillor to be "a Freeholder or Householder of the Township *at the time the assessment was taken, and at the time of such election* seized or possessed of real property held in his own right or that of his wife as proprietor or tenant thereof, which shall be rated in his name on such Collector's Roll to the amounts mentioned in the Act.

MACAULAY, C.J.C.P.—*Held*, in Chambers, that the defendant was ineligible, and that a new election must take place, refusing to seat the relator as prayed, on the ground that though the statement claimed that the relator should be returned by reason of the defendant's being disqualified, and of the relator having the next greatest number of votes,—yet it did not allege that notice of the relator's disqualification was publicly given at the election, so that the electors, having knowledge thereof, might have been aware that their votes for him could not be legally received.(a)

On application to Q.B., under 12 Vic. c. 81, sec. 152, to reverse or alter above judgment. *Held*,

ROBINSON, C. J.—It is not necessary that the statement of facts, placed before a Judge when a municipal election is questioned, should contain all the grounds on which the relator relies to entitle him to the seat, if the election should be set aside.

If there be a disqualification rendering a candidate ineligible, proper notice of it must be given at the time of election.

No new evidence will be received by the Court on the examination of a decision of a Judge in Chambers as to a contested election.

Semble, that whether the Court or a Judge before whom the relator brings his case, will go further than declare the election of the defendant void, or will proceed as well to seat the relator, is a matter of discretion not to be interfered with on appeal.

Reg. ex rel. Clark v. McMullen. 9 U.C.R. 467.

TO CORRESPONDENTS.

R. L.—Defacing, altering or removing "Surveyors' Land Marks," is punishable by Fine or Imprisonment, or both, at the discretion of the Court, by 12th Vic. ch. 35, s. 29. You also have a remedy by civil action for the special damage.

W. H.—An action for injury done to a Boat by another Boat caused by improper management of the crew of the latter may be brought in a Division Court, if the damages are under £10. Be careful however that you lay the venue in the right Division. Look to the order of Sessions setting off your County into Division Court districts.

C. M.—You may compel the attendance of the witness, if "residing in any part of Upper Canada", the fees tendered at time of service of Subpœna are the same as those allowed by the Superior Courts. The Subpœna can issue either from the Queen's Bench or Common Pleas. See 48th sec. 13 & 14 Vic. c. 53. The Hon. J. Hillyard Cameron's Act of last Session (18th Vic. ch. 9) refers only to suits in the Superior Courts, and does not apply to Division Courts.

J. G. M.—We are loth to believe that any respectable man would conduct himself in the manner described. School Meetings are the last places for such exhibitions. The mode of proceeding is clearly pointed out in the 46th section of 13 & 14 Vic. ch. 48.

ONE, &c.—The Plea of "not possessed" in an action of Trespass *quare clausum fregit* does not necessarily raise a question of Title. See *Latham* v. *Spalding*, 17 Q.B. 440.

P. T.—Your surmise is correct: the Stat. 13 & 14 Vic. ch. 74, declares it to be illegal to *purchase or lease* Indian Lands in Upper Canada. It can only be done where the consent of the Crown by an Instrument under the Seal of the Province, has been *first obtained*. The forfeiture in every case is £500, besides such Fine and Imprisonment as the Court may direct.

T. S.—We quite agree with you that Clerks are inadequately compensated for many duties. The subject has, we have heard, engaged the attention of your brethren at the meeting held lately in Hamilton: but what propositions were submitted, or what has resulted from the deliberations, we are, unfortunately, unable to state. We have not received any report of the proceedings.

A DEPUTY SHERIFF.—Your communication will appear in the April number, together with our remarks. We regret that it came to hand too late.

THE LAW JOURNAL.

MARCH, 1855.

APPLICATION FOR CERTIORARI TO THE DIVISION COURTS.

BY the 85th section of the Division Courts Act of 1850 it is enacted:

That any suit brought in any Division Court holden under this Act may be removed or removable from the said Court into Her Majesty's Court of Queen's Bench, or Court of Common Pleas in Upper Canada, by any writ of *certiorari*, provided the debt or damage claimed shall amount to Ten Pounds and upwards, and provided leave be obtained of one of the Judges of the said Court of Queen's Bench, or Court of Common Pleas, in cases which shall appear to the said Judge fit to be tried in either of the said Superior Courts, and not otherwise, and upon such terms as to payment of costs or such other terms as he shall think fit."

This section, it will be observed, gives the Certiorari in express terms, whereas the 90th section of the English County Courts' Act from which it is taken, provides that no action shall be removed into the Superior Courts "by any writ or process," except on certain conditions, which conditions are in substance the same as in the above section—namely, the debt or damages must be of a certain amount, and leave of a Judge obtained. A writ of certiorari to an Inferior Court of Record may be issued, in general, as a matter of course; the writ is the right of the subject at common law. The English County Courts are Courts of Record, but by the 23rd section of the Division Courts Act it is provided "that nothing contained in the Act shall be construed to constitute and create the said Division Courts Courts of Record."

According to the English decisions, the application for leave should be made to a Judge in Chambers and not to the Court (*Re Bowen* vs. *Evans*, 18 L. J. 38, Ex.; 1 Cox & Mac. 237), but it is presumed that a party aggrieved by any order might apply to the Court to review it; or if the Judge refused to make an order, that application may be made to the Court (see *Pike* vs. *Davis*, 6, M. & W., 546; but see also *Morse* vs. *Apperly*, 6 M. & W., 145). If our Division Courts were like the English County Courts, Inferior Courts of Record, there would be no difficulty as to how the writ was to be obtained. According to the English decisions the application is an *exparte* application, and there is no necessity for a notice to the opposite party, upon the ground that by the general analogy of common law the writ of certiorari is the right of the subject, and the words "on such terms as the Judge shall think fit" do not expressly take away the right to the writ as of course, and are not intended to fetter the Judges' authority.

Now, although it is clear that a certiorari to an inferior *Court of Record* is grantable in a civil case, as a matter of course, for it is due *ex debito justitiæ*, yet it is also laid down that the writ does not go as of course to an inferior court, *not of record* (*ex parte* Phillips 2 Ad. & El. 586, *Edwards* vs. *Bowen*, 5 B. & C. 206), and a special application, grounded on affidavit, is necessary; the Rule is not absolute in the first instance (anon. 2 Chit. Rep. 137—*Franks* vs. *Wicks*, 1 Wol. P. C. 2). Applying, then, the analogy of the common law to the certiorari to Division Courts, *which are not courts of record*, it

(a) See No. 9, Mun. Rules. Draper's Rules, p. 468.

would seem that as the writ did not issue as of course, and without notice to the opposite party, neither under the 85th section can the application now be considered an *ex parte* application, nor that leave is obtainable without notice of an intention to apply, or the issuing of a summons to afford an opportunity to the opposite party of being heard.

Looking at the 85th section alone, we see that leave is made a condition to the issuing of a writ; that the Judge in granting leave must be satisfied that the suit is one *fit to be tried in the Superior Courts*, and that he may impose such terms as he shall think fit. If a party's rights are to be affected, it seems only just he should be heard. The Judge may be able to *surmise* the conditions it would be proper to annex for the plaintiff's protection, but the latter could give *positive* information to the Judge upon the point. Granting leave is a judicial act—and wholly in the discretion of the Judge—and if the effect of this section is, as it certainly appears to be, to repeal or render inoperative the provisions of former Statutes as to recognizances, &c., before a cause can be removed; there is strong ground for concluding that it was not the intention of the Legislature that the leave mentioned in the section should be obtained on an *ex parte* application.

We are not aware that the question has been raised, nor indeed of any application under the 85th section. Until the practice is settled, we would recommend a notice of the intended application to be served on the opposite party, and an affidavit of the service thereof, to be laid before the Judge with the other affidavits on applying for leave. We may add that the affidavits in support of the application should state all the material facts (see *Robertson* vs. *Womock*, 19 L. J. 367, Q.B.); and that a general statement, without entering into particulars, will not be sufficient (*Regina* vs. *Hodges*, 9 Jurist, 665). The mode of proceeding, generally, by certiorari, will be found in all the books of practice. The practitioner, however, should take care that the suit is one that may be removed, for the Division Courts have an original jurisdiction in some matters which the Superior Courts do not possess.

IMPORTANT MUNICIPAL DECISIONS.

We have been favored by W. S. Draper, Esq., Barrister, with a Report of *Reg. ex rel. Ranton vs. Counter, Mayor of Kingston*—too late, however, for insertion in the present number—in which Judge Mackenzie decided that "*A Stockholder in a Gas Company having a contract with a Municipal Corporation, is disqualified from being a member of such Corporation.*" It is probable that parties under similar disabilities are to be met with in almost every Town and City Council in Upper Canada:—the decision, therefore, will command general attention.

The cases of *Ellison* vs. *Finlayson*, and *Ellison* vs. *Smith*, in the Common Pleas, decided last Term by the Hon. Chief Justice Macaulay are also highly important. In *Ellison* vs. *Finlayson*, the ground of application for summons in the nature of a *quo warranto* to unseat the defendant was, that he was a *Stockholder in a Joint Stock Road Company, which Company had borrowed a sum of money from the Municipal Council, and had given to the Municipality a Mortgage to secure the repayment thereof some years hence. The Mortgage had been executed before the Defendant's election, and he at the time of his election still remained a stockholder.* In *Ellison* vs. *Smith*, the facts were the same, except that the defendant was a Director of the Company, instead of a Stockholder. *Held*, that the defendants were disqualified thereby, and must be ousted from their seats as Councillors of the Village Municipality of Paris.

PARLIAMENTARY PROCEEDINGS.

AMONG the proposed Law Measures of the Session we find a Bill introduced by the Hon. J. HILLYARD CAMERON, "to amend the Registry Law of Upper Canada." The object of the Bill is, no doubt, to remedy a defect long felt in relation to Judgments, and to compel parties, if they wish to bind lands, to register their judgments in the County where Defendant's lands are situate. The Bill declaring that Judgments shall not give a lien or charge on lands until registered. The 2nd sec. provides that a Judgment Creditor, unless his Judgment is registered before the filing of the bill for Foreclosure of Mortgage, need not be made a party to any such Foreclosure. The 3rd sec. points out what only shall be notice of proceedings in Chancery by which title or interest in lands shall be called in question. The 4th sec. states that a decree of Foreclosure, and every other decree in Chancery affecting any title or interest in land, may be registered. The 5th sec. provides for proof of Deeds, Wills, or Powers of Attorney, affecting lands, where executed *out* of Upper Canada, either on the evidence already required by law, or on affidavit sworn before any Judge of the Superior Courts of Common Law or Equity in Upper or in Lower Canada, or before any County Court Judge in U. C., or Circuit Court Judge in L. C., or before a Commissioner in Upper or Lower Canada. The 6th sec. relates to Fees to Registrars for services under the Act.

Mr. HARTMAN has brought in a Bill to amend the Act of 14 & 15 Vic. c. 14, "by providing that a City included within a County for judicial purposes shall pay a fair proportion of the sum required for the payment of Jurors in such County:"—this is

no more than common justice, for it were unreasonable to burden a county with more than its due share of expenses connected with the administration of the law. The Bill proposes that Cities and Counties shall bear the expenses in proportion to the value of rateable property in each.

Mr. VALOIS proposes to amend the 13th sec. of "The Railway Clauses Consolidation Act," by making it imperative on Railway Companies incorporated since the passing of "The Railway Clauses Consolidation Act," or in the same session with that Act "to place framed gates in the fence on each side of the Railway, at each place where it crosses any farm or land, for the use of the proprietor of such farm or land," so as to prevent bars or openings being substituted: also that the Company shall be bound to employ a person as Fence-viewer for each nine miles of Railway, "whose duty it shall be to see that the fences on each side of the Railway, and the gates at each crossing, are in good order," and to repair the same when necessary. The 5th sec. allows of summary proceedings for recovery of damages from the Company. The measure, if engrafted on the Railway Law, will probably save much litigation: it would, at any rate, be an important safe-guard against accidents, and might advantageously be extended to all Companies.

SPEEDY TRIAL OF SMALL OFFENCES.

WE see by our late files that Lord Brougham has introduced in the House of Lords a measure for the speedy trial of offenders, and that it has received the cordial support of the Lord Chief Justice. The want of an inexpensive trial and prompt punishment of small offences, and the long delay of trials, is a great and acknowledged evil in criminal jurisprudence. This glaring defect in the law is more felt in England than with us; and while we believe that a general measure for Canada, such as Lord Brougham's, is uncalled for and would be unsafe, we think it might be applied with advantage to Cities and large Towns, where Stipendiary Magistrates act. The subject, at all events, is deserving of consideration.

Lord Brougham's Bill enables two Justices to convict on charges of larceny, of a simple and trifling character; but the Justices may, if they think the case one properly the subject of an Indictment, deal with it in the ordinary way. The punishment is limited to three months. The forms of the proceeding are regulated in the Bill: and a conviction is made a bar to further proceedings. It also provides for the expenses of prosecutors being paid. Lord Campbell, in giving his assent to this Bill, said that it would probably go down to the Commons with the unanimous approval of the House of Lords.

JUDGE BURNS' LETTER.—We should feel particularly obliged to any of our subscribers, having a spare copy, who would favour us with Judge Burns' letter to the Hon. Robert Baldwin on the subject of Division Courts, and published by the late Mr. Scobie, in pamphlet form—our own copy having been mislaid. If sent in an open cover, it can come by mail as a printed paper.

SURROGATE COURT.

(Notes of English Cases in relation to)

PREROGATIVE COURT—*Re Mary Reed—28th December*, 1855.

Will—Cancellation.

Where it is stated on the paper itself that a Will had been executed by sealing, and the seal appeared to have been torn off, the Will was assumed to have been cancelled.

The deceased died in 1807, leaving a testamentary paper duly executed. It having been supposed that the deceased was not possessed of any property worth looking after, no notice was taken of her will until May, 1854, when it was discovered that there was a sum standing in her name in the Consols. The application was for administration with the will annexed of the deceased Mary Reed. When the will was produced it was found to be written on five sheets of paper, but from the top of each sheet something had been torn, leaving a gap in each sheet. When or how this mutilation occurred no explanation could be given: none of the writing was affected by the mutilation. The attestation clause set forth that, "the writing contained in this and the four preceding sheets of paper hereunto annexed was signed and sealed by Mary Reed," &c.

Sir JOHN DODSON: "The circumstances attending the case "are peculiar; here is a will dated as far back as 1795; the "alleged testatrix died in 1807, and no steps have been taken "to prove the will until now. The attestation clause states "the will was sealed, as well as signed. I am strongly "inclined to think that the seal has been torn off, and if done "by the testatrix would in my opinion amount to a cancellation "of it. I must, therefore, reject the motion, leaving those interested under it to propound it if they think proper.

DIVISION COURTS.

(Reports in relation to)

ENGLISH CASES.

EX. IN THE MATTER OF HILL v. SWIFT AND WIFE.

County Court jurisdiction—Power of Judge to amend particulars—Prohibition.

Plaintiff's particulars showed a debt of £96, reduced by set off, as made by plaintiff, to £53—the Judge of his own accord amended by entering an abandonment of the excess over £50.—Held, that he had no power to do so; that it must be the plaintiff's own act, and that a Writ of Prohibition must issue.

A plaint had been issued out of the Co. Court of Leeds by Jane Hill against Roger Swift and wife, executors of John

Megsen: the summons served required defendants to answer "to a claim, the particulars of which are hereunto annexed." The bill of particulars set forth an account, consisting of various items, amounting to £96 16s. 8d; and it contained, under the head of credit, the following..... £96 16 8

"By various sums of money paid by John Megsen, for me and on my account.... 43 15 4½

Balance due me..... £53 1 3½

and I seek to recover £50, the extent of the jurisdiction of the Court."

The parties appeared at the day of hearing, when the defendant's Counsel objected to the jurisdiction, on the ground that the particulars showed *ex facie* a demand of £96 16s. 8d., sought to be reduced by a set off never agreed to as a part payment, and still showing a balance of £53 odds.

The Judge said he would not allow justice to be defeated, and that he would give the plaintiff leave to amend the particulars, and called on the defendants to produce the particulars to be amended. They refused; whereupon the Judge himself dictated an amendment, commencing thus:—"This "action is brought to recover the sum of £50, in satisfaction "of the sum of £96 16s. 8d., the amount due to me on the "following account, and I abandon the excess." The defendants having left the Court, the Judge ordered service of this amended particular on the defendant's Attorney, then and there. The Judge then asked the defendant's Attorney and Counsel if they appeared in the cause, and on their stating that they did not, called on the plaintiff's Attorney to proceed and prove his case, as in an undefended cause, and thereafter he gave judgment for the plaintiff.

Counsel for the defendants had obtained a Rule for a writ of Prohibition, and produced affidavits setting forth the above facts. Affidavits were now produced which did not vary in any material statement.

Bliss, Q.C. and *Kemplay* showed cause, and contended that the Co. Court Judge had power to amend the particulars, that the plaintiff's Attorney was there, and the Court would presume that the Attorney consulted the client as it became necessary.—[POLLOCK, C.B.: This does not appear upon the [illegible], it is not quite clear to the Court that the Attorney would have any power to consent to such an amendment and abandon a part without consulting the plaintiff. In such a case as this we presume nothing; if we did, the presumption would rather be the other way.]—There was a consent in fact to abandon the excess, and therefore there was no ground for the prohibition.—9 & 10 Vic. c. 95, s. 78; Rule Co. Court, 104; Avards v. Rhodes, 8 Ex. 312; Kempton vs. Willich, 19 L. J. C. P. 269; Isaacs vs. Wyld, 7 Ex. 163; Re Walsh, 1 E. & B. 383; Lexden Union vs. Southgate, 23 L. J. Ex. 316.

Edwin James, Q.C., and *Prentice*, in support of Rule, were not called upon.

PARKE, B.—There is no doubt, since *Isaacs* vs. *Wyld*, 7 Ex. 163, that it would be competent for a plaintiff to abandon all the excess of his demand over £50, but then we must be satisfied that the plaintiff clearly understood that that was the object of the proceeding here. There is no evidence that the plaintiff, who was a woman, and who may be supposed not to have known what was assumed to be done in her name—really understood the effect of the amended particulars. The Co. Court Judge had no power of himself to amend particulars; it must be the plaintiff's act. We have no proof that the plaintiff consented to the amendment, it is said the Attorney consented for her; but it is not even clear that the Attorney was authorised by the plaintiff, or himself knew the effect of the amendment proposed by the Judge. The Rule for a Prohibition must therefore be absolute.

POLLOCK, C.B., and MARTIN, B., concurred.

ALDERSON, B.—The defendant may have gone to trial upon the very ground that the Judge had no jurisdiction, and surely he had not jurisdiction; that being so, the defendant may fairly be entitled to his costs up to the time of the hearing. The Judge could not, in the way stated, reduce the plaintiff's demand to an amount which may give himself jurisdiction, and proceed then and there to determine the enquiry. *Rule absolute.*

[The County Court Rule 104 is the same as Division Court Rule 43, and the provisions in the English Act as to "abandoning the excess" are similar to those in our own Statute.

Under the English Act, it has been decided that the abandonment must be by some positive act on the part of the plaintiff. *Vines* vs. *Arnold*, 1 Cox & Mac. 32; *Brunskill* vs. *Powell*, 19 L. J. 362 Ex. But there is nothing definite as to the time when the act of abandonment is to be done, nor do the English Rules direct. In *Isaacs* vs. *Wyld*, above cited (and reported also in 1 Cox, Mac. & Hest, 500), PARKE, B., in delivering the judgment of the Court, said; "The most reasonable course undoubtedly is, that the abandonment should be on the face of the particulars, &c., so that the defendant may at once acquiesce, if he is so minded, instead of being obliged to be at the trouble and expense of attending the County Court in order to compel the plaintiff to abandon the excess over £50 on the hearing; but there is no express provision to this effect in the Act, and the language of the 63rd section, though equivocal, seems rather to intimate that the abandonment may be on or before the hearing."

In the Division Courts the practice has been wisely settled by the Commissioners, for the first section of the 69th Rule provides that, where the excess is abandoned, it must be done in the first instance, on the claim or set off.—*Ed. L. J.*]

Q.B. GRAHAM v. BURGESS. *Jan'y*, 1855.

Amount of claim and amount recoverable—Appeal.

The right to appeal under 13 & 14 Vic. c. 61, s. 14, does not depend on the amount claimed in the plaint, but the amount legally recoverable.

This was an appeal from a decision of the Judge of the County Court of Cheshire. The plaint claimed £20 1s., and was brought against the High Bailiff of the Court for not levying under process in a former suit, and for a false return. The amount of debt and costs which the bailiff was required to levy in the previous suit was only £12 17s. 8d.

McIntyre, for respondent, took a preliminary objection that no appeal lay, because the amount recoverable was under £20. The plaintiff could not legally recover more than the debt and costs in the former action; and could not entitle himself to appeal by merely claiming in his plaint a larger amount. He referred to *Arden* v. *Goodacre*, 11 C.B. 367, and *Powell* v. *Hood*, 2 Lord Raym, 1414.

Lloyd—Contra.—The amount ultimately recovered is not material. To hold the appeal dependant on the amount recovered would very much limit the operation of this beneficial clause. The statute refers to the claim made in the plaint; the Judge must look to the amount there stated to see whether he has jurisdiction; he would not have had jurisdiction to entertain this plaint before the passing of the 13 & 14 Vic. c. 61.—[COLERIDGE, J.: Do you admit that the damages are limited by the debt and costs in the former suit?]—They are not necessarily so; the action is for unliquidated damages, and it would have been competent to the Judge to give more than £20.

Lord CAMPBELL, C.J.—I think this a clear point; the statute 13 & 14 Vic. c. 61, s. 14, gives a right of appeal in those cases where jurisdiction over the cause of action is given to the Co. Court by that statute. We must see, therefore, what the cause of action is, and what is the amount of damages claimed in the plaint. Now here the cause of action was such, that according to law, damages to the amount of £20 could not be given. The Judge, therefore, had jurisdiction over it under the first County Court Act; and the jurisdiction was not given by the stat. 13 & 14 Vic. c. 61. But it is only in the cases to which the extended jurisdiction applies that there is an appeal given by section 14. This was not such a case, and there is no right of appeal.

The other Judges concurred.—*Appeal dismissed.*

[This case, as to appeal, is *not* very important in relation to Division Courts, but in other respects may guide the Practitioner. From this case it would seem that the Courts above will not take the sum mentioned in the Particulars as the only criterion of jurisdiction as regards amount, but will look into the substance of the cause of action, and that the proper test is the amount *legally* recoverable.

Quære—what bearing would the principle contained in the above decision have in reference to the 85th section, and also the 32nd and 59th sections of our Division Courts Act?—*Ed. L. J.*]

MONTHLY REPERTORY.

Notes of English Cases.

COMMON LAW.

EX. STEWART *v.* MACKEAN. *Jan.* 30.

Principal and surety—Principal and agent—Guarantee—Alterations of terms of agency—Accommodation bills.

B., a bottle manufacturer, appointed A. as his agent, on certain terms, "all monies to be duly accounted for." S. shortly after agreed to be A.'s surety on these terms: "I hereby agree to guarantee A.'s intromissions (or dealings) as your agent to the extent of £500." Afterwards A. & B. agreed, without S.'s knowledge, to alter the mode of accounting, whereby B. was to draw accommodation bills every month, and A. was to accept them for a certain commission, and he was to contribute all sums in hand towards taking up each bill as it became due. These bills had no relation to the state of the agency account, and far exceeded it in amount:—

Held, (POLLOCK, C. B. *dissentiente*) that S. was not discharged from liability on the guarantee for A.'s acceptances, for the terms of the guarantee were general, and the alteration was merely in the mode of A.'s accounting to B.

Q.B. TANNER *v.* CHRISTIAN. *Jan.* 23.

Principal and agent—Personal liability of contracting parties.

Where C., acting on the part of N., signed an agreement to execute a lease to T., T. to pay rent to C. for the use of N., and T. to execute a counter part, if required by C., on the part of N., and T. agreed not to have an auction on the premises without consent of C., and such agreement was signed by C. without reference to any principal:—

Held, that C. was personally liable on the agreement.

Q.B. STOLER *v.* HENLOCK. *Jan.* 22.

Master and servant—Servant for a particular job—Liability of master for damage arising from servant's negligence.

Defendant employed P. to clear out a drain in the public road before defendant's house. P. was not the defendant's servant, and was not employed by him as a contractor, but as a person having skill in making drains. Defendant gave no directions to P. as to the manner in which the drain was to be cleaned, nor did he superintend P. in his work. P. filled up the drain with loose soil, so that the plaintiff's horse, putting his foot in it, fell and was injured.

Held, that P. was defendant's servant to do this particular job, and therefore defendant was liable for the injury to plaintiff's horse caused by P.'s negligence.

Q.B. FISON *v.* KITTON. *Jan.* 18.

Contract of sale—Statute of Frauds—Letters, construction of—Memorandum in writing.

In an action for non-delivery of oil-cake upon a contract of sale of 100 tons at £9 per ton, to be of the same quality as the last 100 tons before then sold by the defendant to the plaintiff:—

Held, that from the letters of the plaintiff to defendant, and in which this contract was truly stated by the plaintiff, and in reply to which the defendant said that he would fulfil all contracts literally and in the spirit in which they were made, and which letters were duly signed, there was a sufficient memorandum of the contract in writing to satisfy the Statute of Frauds.

C.C.R. REGINA *v.* FERGUSON. *Jan.* 20.

Joinder of counts for felony and misdemeanor.

Where an indictment contains two counts, the first for assaulting with intent to rob, and the second for attempting to rob, and the prisoner was convicted on the first:—

Held, on motion in arrest of judgment for misjoinder, that the conviction was good.

C.C.R. REGINA *v.* DOLAN ET AL. *Jan.* 20.

Felonious receipt of stolen goods—Restoration to the owner between the stealing and receiving.

Stolen goods were found in the pocket of the thief by the owner, who sent for a policeman.

The policeman took the goods, and the three went together towards the shop of A., where the thief had previously sold stolen goods. When near it the policeman gave back the goods to the thief, who was sent by the owner to sell them where he had sold the others. The thief then went alone into A.'s shop and sold the goods to him, and returned with the proceeds to the owner:—

Held, that under those circumstances, A. could not be convicted of receiving stolen goods.

Q.B. JOHNSON *v.* ROBERTS. *Jan.* 27.

Auctioneer—Abortive sale—Recovery of deposit.

The purchaser at a sale, which turns out abortive from vendor's inability to make a good title, cannot recover the deposit from the vendor as money had and received, though paid over to him, but must sue the auctioneer, he being the agent of both parties, to appropriate the deposit to the party entitled to it.

EX. OULDS v. HARRISON. *Dec.* 18.

Bill of exchange—Overdue bill—Indorsement to defeat set-off—Fraud.

A., as indorsee of an over-due bill, sued the acceptor C., to whom the holder B. was indebted at the time the bill became due. C. pleaded that after the bill became due, and before it was indorsed to A., the holder B. was indebted to C. in a sum exceeding the amount of the bill; and that B., in order to deprive C. of his right of set-off, and to defraud C., indorsed the bill to the plaintiff without any consideration:—

Held, on demurrer, that the plea was bad; for the ground of set-off was a collateral matter, and not one of the equities which attached to the bill itself; and that as B. was not alleged by the plea to be bound to admit the set-off, his putting the over-due bill in circulation was no fraud nor any infringement of C.'s rights.

Q.B. FARLEY v. DANKS. *Jan.* 15.

Maliciously procuring plaintiff to be made a bankrupt, action for will lie, although the adjudication be wrong.

An action for maliciously procuring the plaintiff to be made a bankrupt will lie although the facts set forth in the petition and affidavit, upon which the adjudication of bankruptcy proceeded, did not disclose sufficient grounds for justifying the commission in pronouncing such adjudication. This making a mistake in law will not render the defendant less liable, as it is in consequence of his act that the adjudication is pronounced.

Q.B. JENNINGS v. ROBERTS. *Jan.* 25.

Bill of Exchange—Notice of dishonour.

A Bill of Exchange made payable at a bank in London was due on the 19th. On the 20th the plaintiff learnt from a clerk in the branch bank in Yorkshire that the bill was dishonoured, and would be returned on the morrow. The plaintiff gave notice of this the same day to the defendant, and said he must have the money from the defendant on the morrow:—

Held, a good notice of dishonour and unobjectionable, on the ground that the plaintiff at the time could not have known the fact of the dishonour.

[Cases cited on argument: *Hartley* v. *Case*, 4 B. & C. 339; *Caunt* v. *Thompson*, 7 C. & B. 908; *Chapman* v. *Keane*, 3 A. & E. 193; *Harrison* v. *Ruscoe*, 15 M. & W. 231.]

Q.B. TOWN v. MEAD. *Jan.* 18.

Statute of Limitations—21 Jac. I. and 4 & 5 Anne, c. 16, s. 19.

This was an action for goods sold and delivered. Plea—the Statute of Limitations. Replication—that at the time of the accruing of the cause of action, the defendant and a joint contractor were abroad; that the defendant returned to this country; that the other joint contractor died abroad less than six years before the commencement of the suit. On demurrer to Replication:—

Held, that the Replication was good: that the Statute of James did not begin to run until the death of the joint contractor abroad. *Quære*, whether it would ever begin to run, as he could never return to this country.

[Cases cited: in support of the demurrer,—*Perry* v *Jackson*, 4 T.R.; *Fanin* v. *Anderson*, 7 Q.B., 811; *Rhodes* v. *Smethurst*, 4 M. & W. 63: and in support of Replication,—*Townsend* v. *Deacon*, 3 Ex. 706; and *King* v. *Hoare*, 13 M. & W. 494.]

EX. PORRIT v. BAKER AND ANOTHER. *Jan.* 22.

Game—Contract to deliver pheasants—Illegality.

Defendant contracted to deliver to the plaintiff eight pheasants when he required them; defendant pleaded that such an agreement was void under the Game Act (1 & 2 Wm. IV. c. 32.)

Held, that it might not, and upon the pleadings in this case was not, void.

PARKE, B., in giving judgment, said: "Your plea is clearly bad; it does not hit the direct point. They may have been required of the defendant in the right time; and what is there to prevent the defendant's buying the pheasants in proper season and afterwards delivering them, when required, out of a mew? If nothing, your plea is bad, and it contains no allegation to the contrary.

CHANCERY.

V.C.W. HILL v. ANDUS. *Jan.* 31.

Merchant Shipping Act, 1854—Liability of shipowner—Jurisdiction.

A shipowner suing in equity under s. 514 of 17 & 18 Vic. c. 104, for the purpose of having the amount of his liability in respect of the several events specified in that Act determined and rateably distributed among the several apprehended claimants, and to have their suits in other Courts stayed, must admit that he has incurred some liability before he can obtain the assistance of equity.

[N.B. This Act is printed at length with the Statutes of Canada for last session.—*Ed. L. J.*]

M.R. GREENSLADE v. DARE. *Jan.* 21, 22, 23, 31.

Constructive notice.

The want of a receipt for purchase-money on a title deed, coupled with other circumstances, held not sufficient to bind a purchaser to make enquiries into the particulars of the transaction, which was alleged to have been a fraudulent purchase from a lunatic.

V.C.S. HUGHES v. PARAMORE. *Jan.* 22.

Statute of Limitations—Acknowledgment within the stat. 9 Geo. IV. c. 14, s. 1—Acknowledgment of a general account—Continuing contract to settle an account.

There being an open account between R. and H. extending from Jan. 1834 to within a short time of the death of H. in 1847, the following memorandum was executed by H. in 1845:—"It is agreed that Mr. R., in his general account, shall give credit to Dr. H. for £174, being for bricks delivered, &c., in 1834. Dated 15th Sept., 1845. J. H."

Held, that this was a sufficient acknowledgment within Lord Tenterden's Act, by H., of an open account, to keep the claim of R. out of the operation of the Statute of Limitations.

Any writing which amounts to an acknowledgment of an open account between two persons, must also be evidence of a continuing contract to settle the account, i.e., of a promise to pay, or of a right to receive the balance.

U. C. CHANCERY JUDGMENTS.

(Reported by Adam Crooks, Esq., Barrister-at-Law.)

Judgments given in full Court, on Monday, Feb. 12, 1855.

HAMILTON *v.* MCNAB.—Bill filed to redeem; defendants, Duncan McNab and Alexander McNab; Duncan McNab having obtained an absolute Deed of Conveyance of the premises from Alexander McNab, which did not give the true nature of the transaction as between these defendants; this being established to be a mortgage transaction,—Decree for redemption.

FULLER *v.* RICHMOND.—Bill filed for specific performance of an agreement between plaintiff and one of defendants, whereby plaintiff had agreed to advance money for getting out saw logs for him; and having made advances accordingly, the defendants notwithstanding sought to interfere with his right to the saw logs. Injunction had been previously granted on motion—and now, the Court treating the saw logs as chattels of peculiar value, decreed specific performance, with costs.

DALTON *v.* MCNIDER.—Question arose as to plaintiff's right to pay the amount of a judgment for a debt to the pretended Bank of Upper Canada, at Kingston, to the defendant, one of the Commissioners under the Statute, in bills of the bank, which had not been deposited within the time limited by the Act. This right was negatived by the Court.

SHAW *v.* LIDDELL.—Bill for foreclosure against Liddell and his assignees in trust for the benefit of themselves and other creditors who should come into the assignment.—Declared that it was not necessary to make these other creditors parties under the general order.

GILMOUR *v.* CAMERON.—Bill to redeem defendant Cameron, and to foreclose other defendant.—Declared that plaintiff had a right to tack his judgment to mortgage debt, and thus to hold a lien for both on both estates incumbered, contingent personal as well as real estate.

SIMPSON *v.* GRANT.—Question of costs. Decree was to dismiss bill with costs. Plaintiff contended that inasmuch as defendant might have raised his defence by demurrer, instead of allowing the cause to go to a hearing, he was not entitled to the costs arising from having pursued such a course. The Court held that there was no general rule upon the subject, and as there were other questions of fact involved in the case, decided that defendant was entitled to all his costs.

WARREN *v.* MCKENZIE.—Bill filed by heir-at-law to redeem administratrix, who had become the assignee of a mortgage of his ancestor, and had also purchased (as she supposed) the Equity of Redemption at a Sheriff's sale, under a writ of execution against lands. Question was whether administratrix should be allowed, in addition to the mortgage debt, the amount she had paid for this purchase to the Sheriff.—*Held*, that she was not.

LEE *v.* COOMBS.—Decree directing an enquiry as to the existence of the bond and will referred to in the proceedings in the cause.

FERRIER *v.* REID.—Foreclosure suit.—The property mortgaged was that of the defendant, Mrs. Reid, who had joined in the mortgage with her husband, and the proper certificate was endorsed. Plaintiff had obtained decree of foreclosure absolute some ten years since. Property was at Fort Erie, and had lately become very valuable. Defendant, Mrs. Reid, filed a petition to open the foreclosure, and for a new day to redeem, from an informality in the original decree. The Court refused the application.

IN RE SHAW, a lunatic. Appeal from Master's report, in which he had disallowed a claim of a creditor as barred by the Statute of Limitations.—Appeal dismissed.

MCGILL *v.* KNOTT.—*Held*, that plaintiff might go on without service of warrants, on producing an affidavit shewing that defendant could not be served.

GOODEVE *v.* MANNERS.—Plaintiff desiring it, the carriage of the decree was given to defendants, who are to have their costs. Land directed to be sold. Sheriff's Deed set aside. Plaintiff to be paid out of proceeds of sale.

PATTERSON *v.* CRAWFORD.—Macara, a solicitor for several of the parties in the suit, directed to have all his costs.

WADSWORTH *v.* MCDOUGALL.—Question between mill-owners as to interference with rights of plaintiff by defendant. Under the circumstances of the case, injunction applied for refused. Costs reserved.

CORRESPONDENCE.

To the Editor of the "Upper Canada Law Journal."

DEAR SIR,

I have often regretted that when the last Act was passed relative to the Statute of Limitations, 13 & 14 Vic. ch. 61, some provision was not made in the case of accounts between party and party, to enable one of them to recover against the other, when that other admits on oath before the Court that the cause of action or the subject of set-off is a just debt, and has never been paid. I have, in several instances, found cases in which the defendant did not pretend that the cause of action had been settled, but relied on the Statute of Limitations only as a defence. One of a peculiarly hard character occurred a few months ago,—the facts were these: A. had purchased a horse of B., and was to pay in produce, within six months, as B. might require it. The amount was from time to time received, with the exception of about £13. B. had evinced remarkable forbearance in collecting the amount, as the period of payment was extended from six months to two years.—At the end of this period A. gave up his farm, and set up a petty shop, and invited B. to deal with him. B. did so, and opened an account, expecting that the balance due for the horse, payable in produce, would now be paid in sugar and tea, &c.—he continued to take up articles at A.'s shop, and occasionally performed work as a blacksmith, and paid money, keeping back the balance that was due on the horse, in his own hands, but without any actual understanding with A. that such was to be allowed. At length, on some quarrel happening, A. sued B. for the amount of his store account, and when B. gave in evidence the sale of the horse and the balance due on it, was met by the Statute of Limitations. B. honestly admitted the account at the store to be correct. On the contrary, A., when sworn, did not deny the balance, but shewed that the last payment made on it was more than six years before the commencement of the suit; that he never intended to pay in anything but produce, and did not deliver the goods as part-payment of the contract for the horse; that groceries were cash articles, and that he rendered his account every three months, crediting the work done and money paid, but avoided giving any credit for the balance due for the horse. Here were clearly two distinct contracts—one for a horse, payable in produce; the other for groceries, payable in money. One had become barred by

the Statute, the other not. Yet, though it was certain that the plaintiff in justice owed the defendant a few shillings, law was obliged to prevail over equity. There certainly can be no danger in altering the law so as to compel the debtor to pay, where he admits, on oath before the Court, a balance due which he has never settled for in any way. I should like to hear your opinion on this desirable alteration.

I am also desirous of ascertaining the opinion of the Judges as to the right of Bailiffs to charge mileage on executions where they make several trips, viz.: The bailiff goes and makes a seizure and travels 10 miles; he gets the property receipted and appoints a day of sale; he attends at the day, and the plaintiff, at the solicitation of the defendant, directs the bailiff to postpone the sale: this is done several times before the execution is finally settled: has not the bailiff a legal right to charge for every trip made for the convenience of the defendant? I am inclined to acknowledge the right, but there seem to be others who deny it. All the Act says upon the subject is contained in the Schedule, which says every mile from the Clerk's office, in going to *seize* on execution, where money made or case settled after levy, 4d.—Supposing the decision to be that the bailiff is only entitled to the travel on going to seize, what will be the consequence? He will of course immediately remove the horse, cow, or other property of the defendant, to his own dwelling, and sell it as soon as possible; or if the plaintiff grants lenity, he will return the execution as stayed, charge his fees to plaintiff, and release the defendant's property. In the first case, the defendant is perhaps unnecessarily coerced and injured, when the delay of a few days would enable him, at a trifling expense, to meet the demand. In the second case the plaintiff loses his security on the defendant's property, and is put to costs himself. When he is desirous of proceeding, a new execution must be issued, and the costs of the first execution, and the fees thereon, as well as the second, are superadded, all of which eventually comes out of the defendant. Why then not, as is most conducive to the ends of justice, in mercy to the defendant and a due regard to the bailiff's rights, permit him to charge for every trip necessarily made for the convenience of the defendant, and made at his request?

I am opposed to any sharp practice in pushing a sale under an execution; it will have the effect of inducing bailiffs to form partnerships with agents, who will attend the sale and purchase the poor debtor's property at a trifle, and share the plunder. Be assured that when an officer is not paid his reasonable charges, that he will invent methods by which he may remunerate himself.

Yours, &c.,

JUDEX.

February 8th, 1855.

P.S.—The Clerks of the Division Courts are very badly paid. They are required to do many acts for which they get no remuneration; they are compelled to receive large sums of money, which is a burdensome responsibility, and give receipts to bailiff and take them from suitors, without any charge; they cannot receive a gratuity, even!

[The operation of the recent Statute of Limitations, as remarked by our esteemed correspondent "Judex," discloses a case of extreme hardship—such an one is seldom met with—but the very best laws may work individual wrong in some instances, and we much fear that any exception would be productive of great inconvenience, and encourage fraud and perjury. It may safely be affirmed, we think, as generally true, that the man who would cheat his neighbour would not hesitate to help out his knavery by a false oath. The Statutes of Limitation were built up and brought into their present shape on a lengthened and large experience of their beneficial operation generally, and those who sleep on their legal rights have themselves and not the law to blame if they suffer loss.

In the case above mentioned the Judge might, we think, refuse costs to A.; and in all such defences the utmost strictness may be required in proof of the legal foundation for the same.

Upon the subject of Bailiffs' fees we leave the matter, for the present, to our correspondent's brother Judges, whose opinions he is desirous of eliciting.

We entirely agree in the opinion that Clerks are not properly remunerated.—*Ed. L. J.*]

To the Editor of the "Law Journal."

SIR,

As you have kindly permitted your subscribers to ask questions on points of Practice, I submit the following:—

A. purchased from B. 25,000 barrel hoops at 24s. 6d. per thousand; the agreement was verbal; the distance from A. to B.'s residence was about 12 miles; A. was to haul the hoops at his own expense. Eight thousand hoops were delivered and paid for, and A. sent for remainder, but B. had sold them to another, at a higher price; A.'s team, consequently, returned home empty. A. had then to make purchase elsewhere,—had to travel a greater distance,—and had to pay 3s. 9d. per thousand more than his contract price with B.—*Quære*, is A. justifiable in suing B. in the Division Court, on the ground of a breach of contract, for damages, and recover if his case is proved?

J. T.

[A.'s form of action will be for damages, sustained by reason of the non-delivery of the goods bought; and such an action is maintainable in a Division Court, being "a personal action" within the meaning of the first section of the Extension Act (16 Vic. ch. 177). We confine ourselves, purposely, to the simple question of jurisdiction.—*Ed. L. J.*]

To the Editor of the "Upper Canada Law Journal."

SIR,

I desire to benefit by that portion of your publication, which is alluded to in the Prospectus as to certain queries on points of Law, in asking from some correspondent any hints on the following case:—

A., by his will, after all his lawful debts were paid, gave and bequeathed all his personalty unto his wife, to be enjoyed by her during her natural life; and thereafter he directed and declared that the lots mentioned be sold when the youngest of his children, being the issue of his second marriage, should have attained the age of 21 years, and the proceeds thereof to be equally divided amongst his children of his second marriage as aforesaid—share and share alike. And that in case any one or more of the said children of second marriage should die under 21, without issue, or being a daughter under that age or unmarried, then the share of him, her, or them, so dying, should accrue and go to the survivors in equal proportions, "and be paid, assigned, or transferred, to him, her, or them; or his, her, or their issue, lawfully begotten, together with and at same time as his, her, or their other or original shares are directed to be paid, assigned, and transferred."—Proviso, That in case of death of any of such children under age, leaving issue, the share of parent should go and belong to his, her, or their children, and should not survive to or amongst the rest of Testator's said children as thereinafter expressed.

Then follow devises of land to the issue of his first marriage, no residuary devise—and an appointment of two executors of his will.

On the death of the tenant for life, and consequent determination of that particular estate, in whom does the remainder vest? Or, does the estate lapse and go to the children of both marriages generally as heirs at law, or are the executors trustees for sale? And in the event of their death before that of the tenant for life, could the executor of the survivor of them act as trustee for such purpose? Or would a Court of Equity treat the bequest as of personalty, and decree a sale and division of the proceeds and terms of the will; and if so, by whom should any deed of conveyance be executed?

Yours truly,

A LAW STUDENT.

March 10th, 1855.

LAW SOCIETY OF UPPER CANADA.

[For the benefit of our young friends in the Profession, we give the following Rules and Orders, passed by the Benchers of the Law Society in Hilary Term, 18 Vic. It will be seen that Law Lectures are to be delivered during Term, and that the Term will not be allowed "as kept" unless a certificate of attendance has been obtained. The examinations for call to the Bar are also to be divided into two classes, viz.: those for "call" simply, and those for "call with honours"; the examination partly oral, and partly by printed or written papers, prepared, each Term, by a Committee. We trust that steps will also be taken, as in England, to provide for the examination of students seeking admission as Attornies and Solicitors.—*Ed. L. J.*]

RULE.

[PASSED HILARY TERM, 18 VIC.]

Whereas there is reason to hope that this society may soon be able to procure Law Lectures to be delivered to their members upon a scale more or less extended, and it is desirable to render attendance upon such lectures necessary to the keeping of terms under the rule of the society of 8 Geo. IV. chapter 1. By the Benchers, &c., it is ordained, &c.,—

That so soon as arrangements shall be made by Convocation for the delivery of Law Lectures to the members of this society in term time at Osgoode Hall, notice shall be given of the same in the official *Gazette* of the Province, in like manner as notice of admission and call is now given in the same; and from thenceforth no student of the society shall be allowed any term as kept under the same rule unless in addition to the requirements of that rule and those of the rule of Trinity Term 1 & 2 Wm. IV. chap. 1, he shall, if not excused by Convocation during the same term, upon the ground of sickness or some unavoidable cause, attend all such lectures as may be delivered during such term, and shall exhibit to the Secretary on the last day of such term a certificate or certificates from the lecturer or lecturers of such term of his having so attended the said lectures.

That it shall be the duty of the Secretary of this society to keep a record of the terms in which such lectures shall have been delivered, the days on which each of such lectures was delivered, and the names of the students, who, having duly attended such lectures, shall have duly exhibited to him the lecturer's certificate thereof.

STANDING ORDERS.

1. *Ordered*, That the examinations for call to the bar, had under the rule of Trinity Term 1 & 2 Wm. IV. chap. 12, and passed by the Convocation as sufficient to entitle the candidates to their degree of Barrister-at-Law respectively, be divided into two classes or orders, viz., those for "call" simply, and those for "*call with honours.*"

2. *Ordered*, That in future such examinations be partly oral, as heretofore, and partly by printed or written questions, to be delivered to the candidates assembled for that purpose previous to the examination day; such questions to be answered in writing under the supervision of the Examiner of the society.

3. *Ordered*, That a committee of three Benchers, to be called the Committee of Questions, be appointed every term by Convocation, to frame and settle the questions to be printed or written for the examinations of the following term, which Committee shall meet on the last Wednesday of the following vacation, when they shall be attended by the Examiner of the society, and shall then frame and settle such questions for the examinations of the following term, and shall provide for the printing or copying the same.

4. *Ordered*, That the Candidates for call shall in future attend at Osgoode Hall on the Saturday next preceding the term, and shall receive from the Examiner a copy of the questions to be answered by them in writing, and shall then and there, under the supervision of such Examiner, frame the answers to such questions, and deliver such answers in writing to him for the Benchers in Convocation.

5. *Ordered*, That the attendance of such candidate for the purposes mentioned in the foregoing order be at 10 o'clock A.M., and that the answers be delivered to the Examiner by 3 o'clock, P.M. of the same day.

6. *Ordered*, That all examinations for call do take place on the first examination day of the term, being the first Monday therein, and all examinations for admission on the second examination day of the term, being the first Saturday therein.

7. *Ordered*, That in the publication of calls to the Bar under the 3rd Particular Order of Convocation of Michaelmas term 3rd William IV., such call as shall have been "*with honours*" be stated to have been so.

8. *Ordered*, That the form of the diploma of Barrister-at-Law of this society be altered by the inserting therein between the name and addition of the candidate and the statement of his call to the Bar, the words "*having performed his exercises and passed his examination*" or the words "*having performed his exercises and passed his examination with honours,*" as the case may be.

9. *Ordered*, That in addition to the questions directed to be put to Convocation upon every application for call by the 14th Standing Order of Michaelmas Term 3 Wm IV., there be put in cases of application for call "*with honours*" the additional question whether such examination as had received and passed, be "*with honours,*" which question shall be put between the third and fourth questions, as stated in that order.

10. *Ordered*, That all candidates for a call to the degree of Barrister-at-Law may, if they desire it, be examined "*for honours,*" in which case they shall give notice thereof in writing to the Secretary at least one week previous to the term, and shall endorse their petitions for call with the words "*for honours.*"

11. *Ordered*, That after the examination of any candidate for call shall have been received, passed, and classed, and before the question for the call of such candidate is taken, such candidate may have leave to withdraw his petition for call in like manner and subject to the like conditions as prescribed by the 17th Standing Order of Convocation of Michaelmas Term 3 Wm. IV. for the withdrawal of a petition for admission under similar circumstances.

12. *Ordered*, That the professional part of the examinations for call under the 13th Standing Order of Convocation of Michaelmas Term 3 Wm. IV. shall, until further order, be in the following books, with which the student will be expected to be thoroughly familiar: that is to say, when a candidate does not go in for a call "*with honours,*" in—

REDDY'S ENQUIRY, HISTORICAL AND ELEMENTARY, IN THE SCIENCE OF THE LAW. BLACKSTONE'S COMMENTARIES, vol. 1. ADDISON ON CONTRACTS. SMITH'S MERCANTILE LAW. WIL-

LIAMS ON REAL PROPERTY. STORY'S EQUITY JURISPRUDENCE. STEPHEN ON PLEADING. TAYLOR ON EVIDENCE. BYLES ON BILLS.

Besides the Public Statutes relating to Upper-Canada, and the Practice of its Courts of Law and Equity.

And when the candidate goes in for a call *"with honours,"* then also in—

RUSSELL ON CRIMES. STORY ON PARTNERSHIPS. WATKIN'S PRINCIPLES OF CONVEYANCING. COOTE ON MORTGAGES. DART ON VENDOR'S AND PURCHASERS. JARMAN ON WILLS. STORY'S CONFLICT OF LAWS. JUSTINIAN'S INSTITUTES.

13. *Ordered*, That the foregoing Orders be Standing Orders of Convocation, and do take effect as such from the commencement of Michaelmas Term next, and not before, except as regards the appointment of a Committee of Questions in Trinity Term next, for which purpose the 3rd of such Standing Orders shall take effect upon the first day of Trinity Term next, but not before.

[Candidates for admission to the Law Society are required to pass an Examination in the following works—each class having its standard of excellence.—*Ed. L. J.*]

Ordered, That the examination for admission shall, until further order, be in the following books, respectively, that is to say:

For the OPTIME CLASS, in the Phœnissæ of Euripides, the first twelve books of Homer's Iliad, Horace, Sallust, Euclid, or Legendre's Geometrie, Hind's Algebra, Snowball's Trigonometry, Earnshaw's Statics and Dynamics, Herschell's Astronomy, Paley's Moral Philosophy, Locke's Essay on the Human Understanding, Whateley's Logic and Rhetoric, and such works in Ancient and Modern History and Geography as the Candidates may have read.

For the UNIVERSITY CLASS, in Homer, first book of Iliad, Lucian, (Charon, Life or Dream of Lucian and Timon) Odes of Horace, in Mathematics or Metaphysics at the option of the Candidate according to the following courses respectively: Mathematics (Euclid, first, second, third, fourth and sixth books, or Legendre's Geometrie (first second, third and fourth books), Hind's Algebra to the end of Simultaneous Equations, Metaphysics, (Walker's and Whateley's Logic and Locke's Essay on the Human Understanding,) Herschell's Astronomy (chapters first, third, fourth and fifth) and such works in Ancient and Modern Geography and History as the Candidates may have read.

For the SENIOR CLASS, in the same subjects and books as for the University Class.

For the JUNIOR CLASS, in the first and third books of the Odes of Horace, Euclid (first, second and third books,) or Legendre's Geometrie (first and second books) and such works in English History and Modern Geography as the Candidates may have read, and that this Order be published every Term with the Admission of such Term.

Ordered, That the Class or Order of the Examination passed by each Candidate for admission, be stated in his Certificate of Admission.

NOTICES OF NEW LAW BOOKS.

Reports of Cases argued and determined in the English Courts of Common Law, with Tables of the Cases and Principal Matters. Edited by Hon. GEORGE SHARSWOOD. *Vol. 77 containing the cases decided in Hilary Term and Vacation, and Trinity Term*, 1854, 17 *Victoria*. Philadelphia: T. & J. W Johnson, Law Booksellers. 1855—p.p 1508.

This volume, which is the 77th in continuation of the Messrs. Johnsons valuable edition of the English Common Law Reports—an edition commencing with Taunton's Reports of the year 1813, and continued in unbroken succession to the present period, is a reprint verbatim under the care of Judge Sharswood, of the 3rd volume of Ellis and Blackburne's reports of cases argued and determined in the Court of Queen's Bench and the Exchequer Chamber on error, down to so late a period as Trinity Term, 1851. It has been re-printed with great promptitude, and whilst the price, 12s. 6d., bound, is considerably less than that of its English original, this volume is quite its equal in point of typo and paper.

A Treatise on the Law of Suits by Attachment in the United States. By CHARLES D. DRAKE, Esq., of St. Louis, Missouri. 1 vol. p. 800; $4.50. Boston: Little, Brown & Co.

"The materials of this work," as stated by the author in his preface, "are almost wholly American; Great Britain the fountain of, and exercising continually a marked influence over the jurisprudence of the United States generally, contributing in this department comparatively nothing."

It is a branch of the Law on which hitherto no work had appeared in America, and with one exception, and that of old date, in England; the necessity for any such work in England being by no means great, as the remedy is one of not very usual occurrence. But the policy of the present age being to relieve the person as much as possible from imprisonment on mesne process, this has been carried to some extent in the States, and as the author remarks, the remedy by attachment may be traced to the need of effective process against *property*, when generally that against the *person* has been abolished.

In this Province we have several enactments analogous to those of some of the States treated of in this volume, which therefore renders it of value to us.

After an abstract of the Statutory provisions of different States of the Union referring to suits by attachment, the work continues for what cause an attachment may issue,—of absent and concealed debtors or those fraudulently removing or disposing of property—of the practical mode of obtaining attachments—of their execution—of custody and bailment of property thereunder—and subsequently enters very fully into the subject of garnishment, and the rights and liabilities of garnishees under the variety of circumstances in which they may be placed.

It is a work which we think may be obtained advantageously by Sheriffs, as well as the profession generally, being very clearly written, with a good sectional arrangement, and Index.

APPOINTMENTS TO OFFICE, &c.

POLICE MAGISTRATE.

THOMA McCRAE, of Chatham, Esquire, to be Police Magistrate for the Town of Chatham.—[Gazetted 3rd March, 1855.]

NOTARIES PUBLIC IN U.C.

ADAM FERRIE, Junior, of Hamilton, Esquire, Barrister-at-Law, to be a Notary Public in U.C.—[Gazetted 10th February, 1855.]

CHARLES SIDNEY COSENS, of Toronto, and JOHN CHARLES RYKERT, of St. Catharines, Esquires, Barristers-at-Law, to be Notaries Public in U.C.—[Gazetted 24th February, 1855.]

GEORGE MOBERLY, of Toronto, Esquire, Attorney-at-Law, to be a Notary Public in U.C.—[Gazetted 3rd March, 1855.]

BEVERLEY ROBINSON RICHARDSON, of Dunnville, Esquire, and JAMES BREEMAN, of North Gower, Esquire, to be Notaries Public in U.C.—[Gazetted 10th March, 1855.]

CORONERS.

JONATHAN VAN NORMAN, M.D., ANGUS STEWART; ROBERT McCULLOUGH, M.D., DAVID D. WRIGHT, M.D., JAMES BARBER; CHRISTOPHER WILLIAM FLOCK, M.D., SAMUEL CARTER, M.D.; CLARKSON FREEMAN, M.D., CHARLES GARDNER, M.D.; ANSON BUCK, M.D.; and JOHN CUNNINGHAM, M.D., Esquires, to be Coroners for the County of Halton.—[Gazetted 24th February, 1855.]

JOHN GIBSON and JOSEPH MULLAKIN, Esquires, to be Associate Coroners for the United Counties of Prescott and Russell.—[Gazetted 10th March, 1855.]

GEORGE PATTERSON and EDWARD VANCOORTLAND, Esquires, to be Coroners for the City of Ottawa.—[Gazetted 17th March, 1855.]